HEARINGS RELATING TO H.R. 10390, H.R. 10391, AND H.R. 10681, AMENDING THE INTERNAL SECURITY ACT OF 1950

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

AUGUST 15–18, 1967

(INCLUDING INDEX)

Printed for the use of the
Committee on Un-American Activities

U.S. GOVERNMENT PRINTING OFFICE
84-351 O WASHINGTON : 1967

COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

EDWIN E. WILLIS, Louisiana, *Chairman*

WILLIAM M. TUCK, Virginia
JOE R. POOL, Texas
RICHARD H. ICHORD, Missouri
JOHN C. CULVER, Iowa

JOHN M. ASHBROOK, Ohio
DEL CLAWSON, California
RICHARD L. ROUDEBUSH, Indiana
ALBERT W. WATSON, South Carolina

FRANCIS J. MCNAMARA, *Director*
CHESTER D. SMITH, *General Counsel*
ALFRED M. NITTLE, *Counsel*

CONTENTS

The House Committee on Un-American Activities is a standing committee of the House of Representatives, constituted as such by the rules of the House, adopted pursuant to Article I, section 5, of the Constitution of the United States which authorizes the House to determine the rules of its proceedings.

RULES ADOPTED BY THE 90TH CONGRESS

House Resolution 7, January 10, 1967

RESOLUTION

Resolved, That the Rules of the House of Representatives of the Eighty-ninth Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the Rules of the House of Representatives of the Ninetieth Congress * * *

* * * * * * *

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * * * *

(r) Committee on Un-American Activities, to consist of nine Members.

* * * * * * *

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * * * *

18. Committee on Un-American Activities.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

27. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

* * * * * * *

HEARINGS RELATING TO H.R. 10390, H.R. 10391, AND H.R. 10681, AMENDING THE INTERNAL SECURITY ACT OF 1950

TUESDAY, AUGUST 15, 1967

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The Committee on Un-American Activities met, pursuant to call, at 10:15 a.m. in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana, chairman; William M. Tuck, of Virginia; Richard H. Ichord, of Missouri; John C. Culver, of Iowa; Richard L. Roudebush, of Indiana; and Albert W. Watson, of South Carolina.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

The CHAIRMAN. A quorum is present, and the committee will come to order.

Before calling our first witness this morning, the Chair would like to make a general opening statement.

Although there are a variety of laws designed to protect the United States from Communist subversion in one area or another, the Smith Act and the Internal Security Act of 1950 are the two major laws of general application.

This hearing is being held to receive testimony on the bills H.R. 10390, H.R. 10391, and H.R. 10681, identical bills which would amend Title I of the Internal Security Act of 1950, designated as the Subversive Activities Control Act of 1950.

Incidentally, H.R. 10390 was introduced by myself, joined by 24 Democrats, and H.R. 10391 was introduced by the ranking minority member, Mr. Ashbrook of Ohio, joined by 24 Republican Members—so these bills have been joined in, under the new rule of the House permitting multiple sponsorship, by over 50 Members, and such is the general regard of Congress for the Subversive Activities Control Act of 1950.

The most important fact to keep in mind as far as Title I of the act is concerned is that the Supreme Court has upheld the constitutionality of the principle on which it is based and its main provisions, which have to do with the registration of Communist organizations.

To date, the Supreme Court has found only one section of Title I of the Internal Security Act to be unconstitutional. That section is section 6, the passport control section. I have introduced a bill to

amend that section to conform with that Supreme Court decision. It is expected that hearings will be held on it at a later date.

Now, although the basic provisions of Title I of the Internal Security Act have been upheld by the Supreme Court, several other court decisions have had the effect of weakening to some extent the effectiveness of the statute.

In addition, 17 years of practical experience in the administration of the act has indicated ways in which the act might be amended to make it a more efficient instrument for dealing with the threat of Communist subversion.

The three bills pending before the committee which are the subject of these hearings are designed to strengthen Title I of the act in the light of this practical experience and the court decisions I have referred to.

Before receiving the testimony of our first witness I would like to make a few observations about Title I of the act, and the principles on which it is based.

For some 20 years now, beginning in 1947 when the Internal Security Act was being considered by this committee, the Communist Party, its fronts, and its fellow travelers have been trying to convince the American public that the act is an extremely harsh and repressive measure; that it is, to quote the late national secretary of the Communist Party, Benjamin J. Davis, "a pro-Fascist" law.

It is important to emphasize, and this can't be overemphasized, that in fact these allegations are completely unfounded.

Title I of the Internal Security Act is actually a relatively mild law. It is so mild that it permits the Communist Party, without punishment, to continue its organizing efforts; it permits it to continue the publication of its newspapers and magazines, the dissemination of its propaganda, its creation of front organizations—all its day-to-day operations which are not declared criminal by other statutes—even though the ultimate aim of all these activities is the subversion of our Constitution and our form of government.

Title I of the act principally provides machinery for informing the Congress and the American public of such Communist activities in the interest of the national security.

In drafting the Internal Security Act, the committee analyzed which weapon used by the Communist Party over the years had been chiefly responsible for such success as it has achieved in this country—and that success was considerable at the time in light of the actual size of the party.

The committee concluded that the party's major weapon was deceit and concealment: concealing the real aim and nature—and the foreign control—of the Communist Party; concealing the fact that it had created and controlled certain organizations which posed as non-Communist; that it had seized control of some originally bona fide groups; concealing the fact that it had infiltrated, and was thereby influencing, the policies of still other organizations.

The committee was convinced also that the American people would never buy communism if it were truthfully packaged, with a full and honest revelation of its aims and nature printed clearly on the eye-catching paper in which the Communists have traditionally wrapped

their low-grade product in an effort to sell it to the American public.

The committee therefore concluded that if a means could be found to disclose these hidden Communist operations to the people, to reveal their Communist nature, origin, and control, the Communists would be stripped of one of their major weapons—that of deceit and concealment—and their subversive efforts would thereby be weakened.

The principle of disclosure which underlies the basic provisions of the Internal Security Act of 1950 has long been recognized as a valid one and as an effective means of dealing with concealed subversive operations, no matter what their nature.

As many of us will recall, President Truman, in the late 1940's, appointed a committee of highly respected Americans to study the question of civil rights in the United States and what could be done to preserve and strengthen them. It was known as the President's Committee on Civil Rights. That committee was generally regarded and recognized as being liberal in orientation.

For the benefit of those persons of good intent who might have some doubts about—or who actually oppose—the registration or disclosure provisions of the Internal Security Act, I quote from the 1947 report of President Truman's Committee on Civil Rights:

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups. * * *

whether they be the Ku Klux Klan—and I am paraphrasing now what I think was in the minds of the committee—whether they be the Ku Klux Klan, the Black Panthers, the Communist Party, or whatever, of whatever stripe.

That is what they said, that the principle of disclosure was the principal way, appropriate way, to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups. The Committee continued:

> The ultimate responsibility for countering totalitarians of all kinds rests, as always, with the mass of good, democratic Americans, their organizations and their leaders. The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

There is nothing new, novel, or, I believe, even questionable in a representative government such as ours using disclosure as a weapon to strengthen and preserve democracy against the efforts of totalitarians who would undermine and destroy it.

The President's Committee on Civil Rights pointed out the following facts in its 1947 report:

> Congress has already made use of the principle of disclosure in both the economic and political spheres. The Securities and Exchange Commission, the Federal Trade Commission and the Pure Food and Drug Administration make available to the public information about sponsors of economic wares. In the political realm, the Federal Communications Commission, the Post Office Department, the Clerk of the House of Representatives, and the Secretary of the Senate—all of these under various statutes—are required to collect information about those who attempt to influence public opinion. Thousands of statements disclosing the ownership and control of newspapers using the second-class mailing privilege are filed annually with the Post Office Department.

Still quoting from the Committee finding of the fields in which disclosure is properly and constitutionally used:

Hundreds of statements disclosing the ownership and control of radio stations are filed with the Federal Communications Commission. Hundreds of lobbyists are now required to disclose their efforts to influence Congress under the Congressional Reorganization Act. In 1938, Congress found it necessary to pass the Foreign Agents Registration Act which forced certain citizens and aliens alike to register with the Department of Justice the facts about their sponsorship and activities. The effectiveness of these efforts has varied. We believe, however, that they have been sufficiently successful to warrant their further extension to all of those who attempt to influence public opinion.

It is difficult to quarrel with that statement and, as I have already indicated, the Supreme Court has upheld the principles stated in it which are embodied in the disclosure provisions of the Internal Security Act.

At the same time, the courts have held that the self-incrimination provisions of the fifth amendment, when invoked, protect an individual from an order to register himself as a member of the Communist Party.

And here is what we did. We found a way in this bill, I think, to preserve the integrity of the Internal Security Act of 1950, that is, in respect to the keeping of a register of the names and addresses of organizations and persons found by the SACB to be Communist, without infringing on the fifth amendment rights of the individuals as interpreted by the courts.

Now how do we do that in this bill? Well, we still have the integrity of the SACB, it is being preserved—and it disturbs me no end to hear people, because the President appointed a certain individual who happened to have married his former secretary a member of the Board, to holler "politics." When I look on TV and I hear this, I say, "Well, look who is saying that."

Well, it disturbs me no end to see that some Members of Congress in this and the other body are after the hide of the SACB. It is not the fault of the SACB if it has not been busy.

The idea of abolishing the Board would be just like abolishing a court, if ever the court gets up on its docket, because it has no more cases to try. If the Board has no more cases to try, it is the fault of this Congress. And now that we have found a way to keep the Board going, we will preserve the Board. You still have adversary proceedings, organizations and persons alleged to be Communist will be brought up before the Board, and the Board will have to find as a fact whether or not they are truly of that character.

If they are truly Communist, then we part with the present structure of the act in this way: Instead of compelling the respondent to register, to sign that he or the organization is Communist, we will require the Attorney General to keep a register of Communist organizations and the names and addresses of those found by the Board to be members of the party.

Now to you, Dr. Hall, who I think is our first witness, to you and me, at least, charging a person with being a Communist is charging a heinous offense.

I don't think anything more denigrating could be heaped upon a man

than to call him a Communist, in my book, and I think in the book of the Congress.

Now when the Board pronounces as a matter of fact that a person alleged to be a member of a Communist-action organization is in fact so, then the bill would require, instead of requiring the individual to sign the register of those persons so found, it requires the Attorney General to keep the books, and compels him to keep an accurate list of the names and addresses of persons found by the Board to be members. I think we have arrived at a solution of the problem which, as I say, completely preserves the original intent of Congress, namely, a register of organizations and persons found to be Communist, as defined, without abridging fifth amendment rights as interpreted by the Supreme Court. Frankly, gentlemen, I am completely fair in saying that since I feel so deeply that to call a man a Communist is such a degrading charge, if I had been a member of the Supreme Court, I, too, would have held that to compel a man to sign that he was a Communist, if he had invoked the fifth amendment, would be an unconstitutional act. So I can find no quarrel with that case at all, so I am very happy that we have found a way to preserve the integrity of the act without abridging any fifth amendment rights.

Now we have other provisions. For instance, there is another provision in this bill. We have a number of them, but another one comes to my mind right now.

The Internal Security Act of 1950 defines an action organization to be, for instance, what the Communist Party itself is in fact. Then it proceeds to define what is a front organization. And the definition of a front organization—and I am groping from memory, and I hope the right words come to my mind—a front organization, according to the act, is one which is dominated or controlled by a Communist-action organization, or what is now in accordance with the finding of the Board, dominated or controlled by the Communist Party.

Now in a certain case that came before the court, hard-core members of the Communist Party were found to dominate and control, in fact, a certain front organization.

The court said, well, to demonstrate that members of the Communist Party control this front is not sufficient. You have to prove agency. You have to prove that they actually acted for the Communist Party in running the front.

Now the Communist Party is not going to go around giving a power of attorney or agency to anybody to represent it. It is done under the table.

So another proposed amendment to the act is to redefine a Communist-front so as to permit the SACB to make an affirmative finding if a group is controlled by people who are in fact Communist Party members, without having to prove agency.

So I think we have found a satisfactory solution to that problem.

At this point, I offer for inclusion in the record a copy of the bills which are the subject of these hearings, a section-by-section analysis of them, and, in addition, summaries of three court decisions relating to the Internal Security Act, which are relevant to various provisions of the bills we are now considering.

(The bills and other documents follow:)

90TH CONGRESS
1ST SESSION

H. R. 10390

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1967

Mr. WILLIS (for himself, Mr. ABERNETHY, Mr. ABBITT, Mr. ASHMORE, Mr. BOGGS, Mr. COLMER, Mr. DORN, Mr. DOWNING, Mr. EDWARDS of Louisiana, Mr. FASCELL, Mr. HALEY, Mr. HÉBERT, Mr. ICHORD, Mr. LANDRUM, Mr. LENNON, Mr. LONG of Louisiana, Mr. POOL, Mr. RARICK, Mr. RIVERS, Mr. ROGERS of Florida, Mr. SELDEN, Mr. STEPHENS, Mr. TUCK, Mr. WAGGONNER, and Mr. WILLIAMS of Mississippi) introduced the following bill; which was referred to the Committee on Un-American Activities

[*H.R. 10391*, introduced by Mr. Ashbrook on May 25, 1967 (for himself, Mr. Del Clawson, Mr. Roudebush, Mr. Watson, Mr. Gardner, Mr. Goodling, Mr. Dole, Mr. Watkins, Mr. Mize, Mr. Winn, Mr. Duncan, Mr. Scherle, Mr. Ayres, Mr. Clancy, Mr. Devine, Mr. Hall, Mr. Utt, Mr. Gross, Mr. Schadeberg, Mr. Wylie, Mr. Miller of Ohio, Mr. King of New York, Mr. Derwinski, Mr. Cramer, and Mr. Adair), and *H.R. 10681*, introduced by Mr. Olsen on June 8, 1967, are identical to H.R. 10390.

[On August 23, 1967, Mr. Langen introduced *H.R. 12552*, which is also identical to H.R. 10390.]

A BILL

To amend certain provisions of the Internal Security Act of 1950 relating to the registration of Communist organizations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

SECTION 1. Paragraph (4) of section 3 of such Act is amended to read as follows:

"(4) The term 'Communist-front organization' means any organization in the United States (other than a Com-

munist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, or (B) is substantially directed, dominated, or controlled by one or more members of a Communist-action organization, and (C) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."

SEC. 2. Section 8 of such Act is amended to read as follows:

"REGISTRATION OF MEMBERS OF COMMUNIST-ACTION ORGANIZATIONS

"SEC. 8. (a) When there is in effect a final order of the Board requiring any organization to register under section 7 (a) as a Communist-action organization and such organization has not filed a statement of its members as required by subsections (d) and (e) of section 7, it shall be the duty of the Attorney General to petition the Board for a determination as provided in section 13 (a) as to each individual whom the Attorney General has reason to believe is at the time of the filing of his petition under section 13 (a) a member of such organization.

"(b) When any organization files a statement of its members pursuant to subsection (d) or (e) of section 7 it

shall be the duty of the Attorney General to petition the Board for a determination as provided in section 13 (a) as to each individual whom the Attorney General has reason to believe is at the time of the filing of his petition under section 13 (a) a member of such organization but whose name was not included upon the statement filed by the organization.

"(c) Any individual as to whom there is in effect a final order of the Board determining such individual to be a member of a Communist-action organization and who is no longer a member of such organization may file a petition for a determination as provided in section 13."

SEC. 3. (a) Subsection (a) of section 9 of such Act is amended to read as follows:

"(a) The Attorney General shall keep and maintain separately in the Department of Justice—

"(1) a 'Register of Communist-Action Organizations', which shall include (A) the names and addresses of all Communist-action organizations registered or by final order of the Board required to register under the provisions of this title, (B) the registration statements and annual reports filed by such organizations thereunder, and (C) the names and last-known addresses of individuals who by proceedings under section 13 are by final order of the Board determined to be members or officers of such organizations;

"(2) a 'Register of Communist-Front Organizations,' which shall include (A) the names and addresses of all Communist-front organizations registered or by final order of the Board required to register under the provisions of this title, and (B) the registration statements and annual reports filed by such organizations thereunder; and

"(3) a 'Register of Communist-Infiltrated Organizations', which shall include the names and addresses of all Communist-infiltrated organizations determined by final order of the Board to be such by proceedings under section 13A."

(b) Subsection (d) of section 9 of such Act is amended to read as follows:

"(d) Upon the registering of each Communist organization by the Attorney General under the provisions of this section, the Attorney General shall publish in the Federal Register the fact that such organization has been registered by him as a Communist-action organization, or as a Communist-front organization, or as a Communist-infiltrated organization, as the case may be, and the publication thereof shall constitute notice to all members of such organization that such organization has been so registered."

SEC. 4. Section 10 of such Act is amended to read as follows:

"SEC. 10. It shall be unlawful for any organization which

is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

"(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name of the organization appearing in lieu of the blank: 'Disseminated by ———, which has been determined by final order of the Subversive Activities Control Board to be a Communist organization'; or

"(2) to use the United States mails, or any means, facility, or instrumentality of interstate or foreign commerce, to solicit any money, property, or thing unless such solicitation, if made orally, is preceded by the following statement, and if made in writing or in print, is preceded by the following written or printed state-

ment, with the name of the organization in lieu of the blank: 'This solicitation is made for or on behalf of , which has been determined by final order of the Subversive Activities Control Board to be a Communist organization'; or

"(3) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: 'The following program is sponsored by , which has been determined by final order of the Subversive Activities Control Board to be a Communist organization'."

SEC. 5. (a) Subsection (a) of section 13 of such Act is amended to read as follows:

"(a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual is of the type referred to in subsection (a) or (b) of section 8 of this title, he shall file with the Board and serve upon such organization or individual, as the case may be, a petition for an order requiring such organization to register, or determining such individual to be a member of such organization,

pursuant to such subsection or section. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order. Two or more such individuals, members of such organization or of any section, branch, fraction, cell, board, committee, commission, or unit thereof, may be joined as respondents in one petition for an order determining each of such individuals to be a member of any such organization. A dissolution of any organization subsequent to the date of the filing of any petition requiring it to register shall not moot or abate the proceedings, but the Board shall receive evidence and proceed to a determination of the issues: *Provided, however,* That if the Board shall find such organization to be a Communist-action or Communist-front organization as of the time of the filing of such petition and prior to its alleged dissolution, and shall find that a dissolution of the organization has in fact occurred as aforesaid, the Board shall enter an order determining such organization to be a Communist-action or Communist-front organization, as the case may be, and the Attorney General shall register it as such in the appropriate register maintained by him pursuant to subsection (a) of section 9 of this title, together with a notation of its dissolution. No such organization found to be dissolved as aforesaid shall be required to file any registration statement or annual

report, nor shall any member or officer thereof be registered or required to register as a member or officer of such organization under the provisions of this title."

(b) Subsection (b) of section 13 of such Act is amended to read as follows:

"(b) Any organization registered under subsection (a) or subsection (b) of section 7 of this title, or any organization which by final order of the Board has been required to register, and which no longer is an organization of such type, or any individual who by final order of the Board has been determined to be a member of a Communist-action organization, and who no longer is a member of such organization, may file with the Board a petition for a determination that such organization no longer is an organization of such type, or that such individual no longer is a member of such organization, as the case may be, and for appropriate relief from the further application of the provisions of this title to such organization or individual. Any individual authorized by section 7 (g) to file a petition for relief may file with the Board and serve upon the Attorney General a petition for an order requiring the Attorney General to strike his name from the registration statement or annual report upon which it appears. Each petition filed under and pursuant to this subsection shall be verified under oath, and shall contain a statement of the facts relied upon in support thereof. Upon

the filing of any such petition, the Board shall serve upon each party to such proceeding a notice specifying the time and place for hearing upon such petition. No such hearing shall be conducted within twenty days after the service of such notice."

(c) Subsection (c) of section 13 of such Act is amended by inserting the following sentence immediately preceding the last sentence thereof: "No person, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture, shall be excused from testifying or producing documentary evidence before the Board in obedience to a subpoena of the Board issued on request of the Attorney General when the Attorney General represents that such testimony or evidence is necessary to accomplish the purposes of this title; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he, under compulsion as herein provided, may testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

(d) Subsection (d) of section 13 of such Act is amended as follows:

(1) Amend paragraph (2) of said subsection to read as follows:

"(2) Where an organization or individual declines or fails to appear at a hearing accorded to such organization or individual by the Board in proceedings initiated pursuant to subsection (a), the Board shall, nevertheless, proceed to receive evidence, make a determination of the issues, and enter such order as shall be just and appropriate."

(2) Add the following paragraphs:

"(3) Any person who, in the course of any hearing before the Board or any member thereof or any examiner designated thereby, shall misbehave in their presence or so near thereto as to obstruct the hearing or the administration of the provisions of this title, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $500 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. Whenever a statement of fact constituting such misbehavior is reported by the Board to the appropriate United States attorney, it shall be his duty to bring the matter before the grand jury for its action.

"(4) The authority, function, practice, or process of the Attorney General or Board in conducting any proceeding pursuant to the provisions of this title shall not be questioned in any court of the United States, nor shall any such court, or judge or justice thereof, have jurisdiction of any action, suit, petition, or proceeding, whether for declaratory judgment, injunction, or otherwise, to question such, except on review in the court or courts having jurisdiction of the actions and orders of the Board pursuant to the provisions of section 14, or when such are appropriately called into question by the accused or respondent, as the case may be, in the court or courts having jurisdiction of his prosecution or other proceeding (or the review thereof) for any contempt or any offense charged against him pursuant to the provisions of this title."

(e) Paragraph (1) of subsection (f) of section 13 of such Act is amended to read as follows:

"(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives or members of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and"

(f) Paragraph (2) of subsection (g) of section 13 of such Act is amended to read as follows:

"(2) that an individual is a member of a Communist-action organization, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order determining such individual to be a member of such organization."

(g) Paragraph (2) of subsection (h) of section 13 of such Act is amended to read as follows:

"(2) that an individual is not a member of any Communist-action organization, it shall make a report in writing in which it shall state its finding as to the facts; issue and cause to be served upon the Attorney General an order denying his petition for an order determining such individual to be a member of such organization; and send a copy of such order to such individual."

(h) Paragraph (2) of subsection (i) of section 13 of such Act is amended by inserting the words "or officer" following the word "member" in the first clause thereof, and striking the numeral "8" in clause (B) and substituting in lieu thereof the numeral "9".

(i) Paragraph (2) of subsection (j) of section 13 of such Act is amended by inserting the words "or officer"

following the word "member" in the first clause thereof, and striking the numeral "8" in clause (B) and substituting in lieu thereof the numeral "9".

SEC. 6. Section 13A of such Act is amended as follows:

(1) Subsection (b) of such section is amended to read as follows:

"(b) Any organization which has been finally determined under this section to be a Communist-infiltrated organization may thereafter file with the Board and serve upon the Attorney General a petition for a determination that such organization no longer is a Communist-infiltrated organization, and that its name be stricken from his register maintained under section 9 hereof."

(2) Subsection (d) of such section is amended to read as follows:

"(d) The provisions of subsections (c) and (d) of section 13 shall apply to hearings conducted under this section."

SEC. 7. Clause (B) in the sixth sentence of subsection (a) of section 14 of such Act is amended by striking the numeral "8" and substituting in lieu thereof the numeral "9".

SEC. 8. Section 15 of such Act is amended to read as follows:

"PENALTIES

"SEC. 15. Any organization which violates any provision of section 10 of this title shall, upon conviction thereof,

be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of section 5 or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment."

SECTION-BY-SECTION ANALYSIS OF H.R. 10390—90TH CONGRESS AMENDING THE INTERNAL SECURITY ACT OF 1950

(Analysis also applies to identical bills H.R. 10391 & H.R. 10681)

Section 1.

Section 1 of the bill amends paragraph (4) of section 3 of the Internal Security Act of 1950, defining the term "Communist-front organization."

The Internal Security Act presently defines a Communist-front organization as any organization which—

"(A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement * * *."

The bill adds an alternate criterion to the definition following clause (A) and redesignates conjunctive clause (B) as clause (C). The new criterion, designated clause (B), reads as follows:

"or (B) is substantially directed, dominated, or controlled by one or more members of a Communist-action organization".

The result is to define a Communist-front organization as (A) plus (C) *or* (B) plus (C).

The purpose of the amendment is to remedy a problem relating to the nature of the evidence required to prove Communist Party[1] control of a front organization. This problem was raised by a 1963 decision of the United States Court of Appeals for the District of Columbia Circuit which held that to satisfy the criterion of Communist-front contained in clause (A), it was not enough to show that the directors of an organization are members of the Communist Party. That court, in the case of the *National Council of American-Soviet Friendship, Inc.* v. *Subversive Activities Control Board*, 322 F. 2d 375, reversed an order of the Board requiring the council to register as a Communist-front organization. It did so on the ground that the Government had failed to demonstrate that the Communist Party members active in the management of the council were also active in the management of the Communist Party, or were acting as the party's agents or representatives in directing the affairs of the NCASF. The amendment clarifies the intent of the Congress with respect to a factual basis which, together with proof of the element (C), renders permissible a finding that an organization is a Communist front.

The use of front organizations as "transmission belts" is basic to Communist tactical doctrine. New front organizations are continually being created. Some fronts are national in scope, others operate only in a certain area, State, community or neighborhood. Fronts in either category may be intended to be more or less permanent in nature, or temporary. Generally, they are kept alive as long as the issue on which they are to propagandize and agitate remains of importance to the party. Some fronts have functioned for decades, others for a few years, a few months or even for just a few days.

Major fronts intended to be nationwide in scope are usually established by direction of the party's top leadership or governing bodies. Others, however, are established by direction of local Communist officials or bodies on the district (generally corresponding to the State), section, community, or neighborhood level.

Whatever the nature of a particular front, however, the party authority ordering its creation seldom, if ever, issues written directives, or even gives oral directives, stating explicitly that certain individual party members are to join the front, that they are to work with other Communists within it, and that they are to see that party members are elected to office and that all actions, publications, etc., of the organization shall conform to the line of the Communist Party and/or of the world Communist movement. In summary, fronts are established, supported, and operated by Communist Party members so as to aid, support, and advance party objectives not only by specific orders of the top party leadership, but also by the initiative of local Communist officials pursuing general party directives and as a result of the general discipline, training, and teachings of the party.

---

[1] In *Communist Party* v. *SACB*, 367 U.S. 1 (1961), the Supreme Court upheld the determination of the Board that the Communist Party, U.S.A., is a "Communist-action organization" as defined in section 3(3)(a) of the act.

The purpose of the amendment is to recognize these realities. In light of the above facts, the conspiratorial nature of the Communist Party and the secrecy with which it conducts its affairs, it is unrealistic and imposes an undue burden on the Government to require that in all cases it prove an express or explicit agency relationship between the Communist Party and its members controlling a particular front organization.

When it has been demonstrated that a group of identified Communist Party members control an organization and that the organization, at the same time, adheres to the line of the Communist Party, it would seem to be an obvious, permissible, and rational factual conclusion that those party members are doing the work of the party and are conducting a front in its behalf and in aid of its general objectives.

Section 2.

Section 2 of the bill amends section 8 of the Internal Security Act relating to the registration of members of Communist-action organizations.

Section 8 of the act presently imposes a duty upon any individual who is or becomes a member of a Communist-action organization to register with the Attorney General as a member of such organization when (a) a Communist-action organization required by a final order of the Subversive Activities Control Board (SACB) to register has not done so, or (b) when such organization has registered but has failed to include his or her name on its list of members filed with the Attorney General.

The amendment eliminates any requirement for self-registration by members of Communist-action organizations.

When a Communist-action organization has not filed a statement identifying its members, or has failed to include an individual member's name in filing a statement pursuant to section 7 of the act, the bill directs the Attorney General to petition the SACB for a determination of membership as to each individual he has reason to believe is a member of the organization at the time he files his petition. (If the Board finds that a particular person is a member of a Communist-action organization, the Attorney General, under other provisions of the bill [see section 3] will then register that individual as such.)

The amendment also authorizes any individual determined to be a member of a Communist-action organization who is no longer a member of such organization, to file a petition for a determination of such fact.

The purpose of the amendment is to establish a system of registration of members of Communist-action organizations which conforms with the requirements of the recent Supreme Court decision in the case of *Albertson and Proctor* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965). In this decision the Court held that when the privilege against self-incrimination (fifth amendment) is invoked in a proceeding to compel members of a Communist-action organization to register themselves, an order of the Board requiring such registration is invalid.

The amendment proposed by section 2 is one of several amendments in the bill which repeal provisions requiring members of Communist-action organizations to register themselves. It substitutes for self-registration a procedure by which determination of membership is made by the Board (on petition of the Attorney General), following which the Attorney General registers the name of the person determined to be a member.

Section 3

Section 3 of the bill amends subsections (a) and (d) of section 9 of the Internal Security Act relating to the Attorney General's maintenance of public registers of Communist-action and front organizations in the Department of Justice.

Section 9(a) of the act presently requires the Attorney General to maintain in the Department of Justice a register of Communist-action and Communist-front organizations. The register of Communist-action organizations includes only the names and addresses of organizations which *register themselves*, together with such registration statements and annual reports as they actually file, and such registration statements as are filed by their individual members. The register of Communist-front organizations also includes only the names and addresses of organizations which register themselves, together with such registration statements and annual reports as they file.

It does not require that the Attorney General maintain a public register of Communist-infiltrated organizations.

Paragraph (d) of section 9 requires publication in the Federal Register of the fact of registration of Communist-action and front organizations.

Section 3 of the bill amends section 9 of the act:

(1) to include the registration of Communist-action and front organizations which are by final order of the Board required to register;

(2) to require, in addition, the maintenance of a register of Communist-infiltrated organizations and notice of the registration of each such group in the Federal Register; and

(3) to delete the maintenance of registration statements filed by members of Communist-action organizations under existing section 8 of the act, and requiring instead that the Attorney General maintain a register of individuals who are by final order of the Board determined to be members or officers of Communist-action organizations.

The purposes of the amendment are:

(1) to provide a more complete system of public disclosure of organizations determined to be Communist by final order of the Subversive Activities Control Board;

(2) at the same time, to bring the Internal Security Act into conformity with the *Albertson-Proctor* decision of the Supreme Court regarding the registration of members of Communist-action organizations.

Section 4

Section 4 of the bill amends section 10 of the Internal Security Act of 1950 relating to the dissemination of publications and radio or television broadcasting by "Communist organizations." (Section 3 of the Internal Security Act defines the term "Communist organization" as including Communist-action, Communist-front, and Communist-infiltrated organizations.)

Section 10 of the act presently requires that a publication intended to be disseminated among two or more persons and transmitted through the mails or by any instrumentality of interstate or foreign commerce by a Communist-action or front organization which is registered or ordered to be registered, or by an organization found to be Communist-infiltrated by final order of the Board, shall be identified as follows: "Disseminated by ————————, a Communist organization."

It also provides that any radio or television broadcast by any such organization shall be preceded by the following statement: "The following program is sponsored by ————————, a Communist organization."

The amendment adds to section 10 a new provision which requires any Communist organization using the mails or any instrumentality of interstate or foreign commerce to solicit any money, property, or thing, to precede such solicitation by the following statement: "This solicitation is made for or on behalf of ————————, which has been determined by final order of the Subversive Activities Control Board to be a Communist organization."

The amendment also modifies the identifying statements of the act above-quoted relating to publications and broadcasts, respectively, as disseminated or sponsored by "————————, ————", which has been determined by final order of the Subversive Activities Control Board to be a Communist organization."

The purpose of the new provision relating to solicitations is to compel Communist organizations to identify themselves as such when they appeal to the public for financial or other assistance. In the past, the Communist Party has collected millions of dollars from persons who would not knowingly contribute to a Communist organization. It has done this principally by soliciting funds and other assistance through organizations (fronts) not generally known to be under its control.

The alteration in the wording of the identifying statements is for the purpose of clearly setting forth the authority for the identification of an organization as Communist.

Section 5

Section 5 of the bill amends subsection (a), (b), (c), (d), (f), (g), (h), (i), and (j) of section 13 of the Internal Security Act of 1950, relating to registration proceedings before the Subversive Activities Control Board.

Subsection (a) of section 13 of the act authorizes the Attorney General to petition the SACB for orders requiring unregistered Communist-action and front organizations to register and requiring unregistered members of Communist-action organizations to register pursuant to section 8 of the act.

The bill amends subsection (a) in the following respects:

(1) It provides that the Attorney General, in the case of individual Communists, will not seek an SACB order that they register themselves, but only a determination of their membership by the SACB. Then, pursuant to other provisions of the bill, the Attorney General would register the individual as a member of the Communist Party instead of the individual himself being required to do so. The subsection would thus conform with the previously mentioned *Albertson-Proctor* decision of the Supreme Court.

(2) It adds a new provision to the Internal Security Act to expedite proceedings relating to the determination of the membership of individuals in Communist-action organizations. It does this by authorizing the Attorney General to include two or more individuals in any petition for determination of membership. (See page 7 of the bill, lines 4–9).

(3) The amendment remedies a deficiency created by a decision of the United States Court of Appeals for the District of Columbia in *Labor Youth League* v. *Subversive Activities Control Board*, 322 F. 2d 364 (1963). In that case the court concluded that the dissolution of an organization subsequent to the commencement of an action by the Attorney General to compel its registration, would moot his action as long as the organization was not revived. The court remanded the case to the SACB on an "inactive status," saying that the proceeding could be reactivated if the Labor Youth League ever resumed operations.

The amendment provides that the dissolution of an organization subsequent to the initiation of proceedings against it shall not moot or abate the proceeding. The Board is required to receive evidence and proceed to a determination of the issues. If the Board finds a dissolution to have in fact occurred, it shall make a finding determining only whether such organization was Communist-action or Communist-front, as the case may be, at the time the petition was filed. If an affirmative determination is made, the Attorney General is then obliged to register the organization together with a notation of its dissolution. No such organization found to be dissolved, however, shall be required to file any registration statement or annual report, nor shall any member or officer of such organization be registered. (See page 7 of the bill, at line 9 through line 3, at page 8.)

This amendment forestalls the effect given by the Labor Youth League case to dissolutions in contempt of the statute and Board. Experience reveals a pattern or practice employed by the Communist Party of directing dissolutions of Communist organizations following the public disclosure of their alleged character resulting from the Attorney General's filing of an initiating petition. Such dissolutions are for the purpose of frustrating the administration of the act. The amendment accomplishes its purposes by requiring the Board to proceed to a determination of the nature of the organization and the establishment of a public record thereof, where a dissolution is alleged to occur following the commencement of the proceeding.

The court's remanding the Labor Youth League case to the SACB on "inactive status" has little or no practical value. Experience indicates that when the Communist Party orders the dissolution of a front because the Attorney General has initiated proceedings against it, that front is never subsequently reactivated as such. If the issue on which it was agitating and propagandizing is deemed to be of sufficient continuing importance to the Communist Party, the party will set up a new front with a different name and different leadership to serve its purpose.

This amendment removes the basis for the court's mooting the Labor Youth League case on the grounds that an order for a dissolved organization to register would be a "vague gesture" because there would be no one to register it or to authorize its registration. It does this by eliminating the requirement that an organization register itself and providing instead that the Attorney General register it.

The court also argued in mooting the Labor Youth League case that the entry of the name of an organization in a book "serves no purpose discernible in this statute, unless the name identifies an existing entity."

The basic concept of the Internal Security Act, however, is that, in a democratic society with an informed citizenry, public revelation of concealed Communist operations of the types encompassed by the act is a necessary (and effective) means of coping with the threat they pose to the national security. The main thrust of the act is to provide the citizenry with a public, documented

record of such Communist operations not only through the register of Communist organizations and individuals, but also through the hearings and reports of the SACB. For this reason, SACB hearings on a very recently dissolved Communist organization, combined with a public report of the Board which summarizes the key facts brought out in these hearings and the inclusion of the name of the organization in a public register, definitely serve the purpose of the statute. They do so by providing information not only on a significant phase of very recent Communist activity and the individual Communists selected to carry it out, but also the Communist Party's objectives, its present-day tactics, its approach to a current issue or issues, and clues to its operations in the near future.

The court further argued, in mooting the Labor Youth League proceeding, that many of the individuals who were perhaps innocently entrapped in the organization would be "enveloped in a cloud" and faced with social sanctions by an order of registration. The court expressed its concern with the "potential impact upon numbers of people without recourse."

Mooting a proceeding, however, would not resolve the problem raised by the court. The public petition of the Attorney General asking the Subversive Activities Control Board to hold hearings wth regard to a particular organization for the purpose of determining it to be Communist, buttressed by allegations of fact supporting his claim that it is in fact Communist, in itself envelops the organization, and consequently its membership, in a "cloud." A mooting of the proceedings makes this cloud permanent and eliminates any possibility of a finding by the SACB that, contrary to the claim of the Attorney General, the organization is not Communist.

Moreover, providing for the completion of the proceeding, as the amendment does, is a means of furnishing information for the innocently entrapped, as well as for members of the general public, which will help nullify Communist operations and prevent future entrapment—which is a principal purpose of the act.

It should be stressed in this regard that the act imposes no penalties on members of dissolved organizations.

Subsection (b)

Subsection (b) of section 13 of the act authorizes an organization or individual registered under sections 7 and 8 of the act to apply to the Attorney General for cancellation of such registration not oftener than once in each calendar year. It also authorizes any individual who has been registered by such organization to petition the Attorney General for an order to strike his name from the registration statement or annual report upon which it appears.

Subsection (b) is amended by the bill in the following respects only: (1) with regard to registration of individuals, the language of the subsection is modified to conform to prior amendments made in deference to the Albertson and Proctor case, and (2) with regard to organizations or individuals registered pursuant to the provisions of the act, applications for cancellation for such registration are permitted without limitation as to time. (See section 5(b) of the bill at page 8.)

Subsection (c)

Subsection (c) of section 13 of the act is amended by the addition of an entirely new provision. With respect to proceedings before the Board and in relation to subpenas issued on request of the Attorney General, the amendment authorizes compelled testimony and the production of evidence despite claims of self-incrimination. It provides for this, however, only after grant of immunity upon representation of the Attorney General that such testimony or evidence is necessary to accomplish the purposes of the title. (See page 9 of the bill, lines 6–24.)

The purpose of this amendment is to provide an effective means for obtaining evidence and testimony essential to accomplish the purposes of the act. In proceedings involving the Communist movement, as with efforts to cope with racketeering, the "code of silence" is a basic obstacle to effective governmental action. There are currently some 55 statutes authorizing grant of immunity to witnesses before various Federal bodies, principally the regulatory agencies. This amendment would extend such authority to an area involving the national security in which such procedures are critically needed.

Subsection (d)

Subsection (d) of section 13 is amended in two respects: (1) the provisions of paragraph (2) of said subsection are amended, and (2) two new paragraphs are added to the subsection. (See pages 10–11 of the bill.)

Paragraph (2) of subsection (d) presently authorizes the entry of a default judgment in cases where an organization or individual declines or fails to appear at a hearing accorded to such. It also permits the exclusion of a party or counsel from further participation in the hearing if either is guilty of misbehavior obstructing the hearing.

The bill amends paragraph (2) by requiring the Board to receive evidence and to make a determination of the issues even though an organization or individual fails to appear in proceedings initiated by the Attorney General pursuant to subsection (a) of section 13. The purpose of this amendment is to strengthen the due process provisions of the act.

The provision relating to misbehavior is deleted from paragraph (2) by the amendment, but new provisions relating to misbehavior are incorporated in an additional paragraph (3).

This new paragraph (3) makes misbehavior in a hearing before the Board punishable as a contempt and establishes a procedure for prosecuting such contempt. Since the Board is a quasi-judicial body, it seems apparent and reasonable that it should have powers to initiate contempt proceedings in order to preserve its dignity and to exercise its functions unimpeded by tactics of obstruction frequently and increasingly applied by Communists in governmental proceedings.

The new paragraph (4) is designed to protect the due administration of the act and prevent frivolous delays in its enforcement by depriving Communist organizations of the ability to initiate dilatory collateral proceedings. It provides that no court of the United States shall have jurisdiction to question the authority, function, practice, or process of the Attorney General or Board in conducting any proceeding pursuant to the title, and requires that all questions on those subjects be raised before the Board or, after completion of Board proceedings, before the courts in the review proceedings authorized by section 14. With regard to offenses charged against an individual pursuant to the provisions of the title, or for any contempt arising out of proceedings under the title, all questions must be raised in the court having jurisdiction of the enforcement proceeding.

The provisions of paragraph (4) in no way deprive an interested party of any right to judicial review of any matter he may seek to contest. The amendment only requires that questions be raised before the tribunal having initial jurisdiction of the matter with respect to which the questions are raised, or on appeal from that tribunal, or in the court having jurisdiction of an enforcement proceeding. The amendment is designed to remedy a serious problem in the administration of the title, by prohibiting a practice frequently resulting in inordinate delays and the frustration of the purposes and orderly procedures of the title.

Subsections (f), (g), (h), (i), and (j)

The amendments proposed by the bill to subsections (f), (g), (h), (i), and (j) are conforming amendments.

Paragraph (1) of subsection (f) is amended to include the phrase "or members of" to conform to the amendment to the definition of Communist-front organization made by section 1 of the bill. (Page 11 of the bill, lines 21–22.)

Paragraph (2) of subsection (g) and paragraph (2) of subsection (h), relating to proceedings before the Board under subsection 13(a), authorizes the Board to state its findings as to individual membership in a Communist-action organization, in conformity with the limitation set forth in *Albertson and Proctor*. (Page 12 of the bill, lines 1–19.)

The amendments to paragraph (2) of subsection (i) and paragraph (2) of subsection (j) are likewise conforming amendments to reflect changes made by other sections of the bill in section 8 of the act. (Page 12, line 19 through page 13, line 3.)

Section 6

Section 6 of the bill amends subsections (b) and (d) of section 13A of the Internal Security Act of 1950 relating to proceedings before the Subversive Activities Control Board with respect to Communist-infiltrated organizations. (Page 13 of the bill, lines 4–17.)

Subsection (b) is amended by deleting the 6-month limitation and permitting Communist-infiltrated organizations to file a petition for a new determination of their status at any time. Further, in conformity with other provisions of the bill, which require the inclusion of Communist-infiltrated organizations in the Attorney General's register, the amendment authorizes the striking of the name of an organization from the register when a determination is made that it is no longer Communist-infiltrated.

The amendment to subsection (d) conforms proceedings of the SACB relating to Communist-infiltrated organizations to those relating to Communist-action and front organizations with respect to the provisions of subsections (c) and (d) of section 13, which set forth procedures on the conduct of hearings before the Board.

Section 7

(Page 13 of the bill, lines 18–20)

Section 7 of the bill amends subsection (a) of section 14 of the Internal Security Act of 1950 to conform with other amendments of the bill deleting the requirements of individual registration.

Section 8

(See page 13 of the bill, at line 24 through page 14.)

Section 8 of the bill amends section 15 of the Internal Security Act of 1950 relating to penalties for violations of Title I of the act.

The amendment retains penalties for the following offenses only:

(1) violations of section 10 of the act, relating to use of the mails and instrumentalities of interstate or foreign commerce, and

(2) violations of section 5 of the act, relating to employment of members of Communist organizations by the United States, defense facilities, and labor organizations.

The amendment deletes all penalties relating to the failure of organizations and individuals to register. These changes are made to conform to other amendments proposed by the bill and also to make the act conform to the holding of the Supreme Court in the *Albertson and Proctor* case, supra, and of the Court of Appeals for the District of Columbia in the case of the *Communist Party of the United States* v. *United States of America*, decided March 3, 1967, which held that the provisions of section 15 of the act imposing criminal penalties for failure of a Communist organization to register were unenforceable on fifth amendment grounds.

Penalties relating to omissions or false statements in registration statements or annual reports filed by organizations or individuals under section 7, are deleted because it is considered that the provisions of Title 18, U.S. Code, section 1001, are adequate to cover such falsification or omission.

The penalties relating to violation of section 6 of the act, the passport provisions, are deleted in the light of the holding in *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964), which held section 6 of the act unconstitutional as sweeping "unnecessarily broadly" and invading the area of protected freedoms.

Communist Party v. *Subversive Activities Control Board*

367 U.S. 1, decided June 5, 1961

The opinion for the Court, Justices Frankfurter, Clark, Harlan, Whittaker, and Stewart concurring, was delivered by Mr. Justice Frankfurter. Justices Warren, Black, Douglas, and Brennan dissented, writing separate opinions.

In November 1950, following passage of the Internal Security Act, the Attorney General petitioned the SACB for an order to require the Communist Party to register as a "Communist-action organization." The party brought suit in the district court to enjoin the proceedings. This relief was denied by a three-judge court which, however, stayed the proceedings before the Board pending appeal to the Supreme Court. The party petitioned the Supreme Court for an extension of the stay pending appeal, which was denied. The party then abandoned its suit for injunction.

Hearings began before the Board in April 1951 and ended July 1952. On April 20, 1953, the Board issued its report concluding that the Communist Party was a Communist-action organization within the meaning of the act—that is, that the Communist Party was an organization substantially directed, dominated, and controlled by the Soviet Union—and issued an order requiring the party to register itself as such.

The party asked for review of the registration order. A number of motions were interposed by the party which were acted upon in the court of appeals and in the Supreme Court. The case was twice remanded to the Board, which filed two successive modified reports on remand. The Board again concluded that the Communist Party of the United States was a Communist-action organization and that it be required to register as such. The court of appeals affirmed, and finally, on June 5, 1961, the Supreme Court of the United States upheld the order of the Board.

In its decision the Supreme Court overruled a number of constitutional objections raised by the party in support of its contention that the registration provisions of the Subversive Activities Control Act of 1950 (Title I, Internal Security Act of 1950) were unconstitutional. The party claimed that the act was violative of article I, section 9, clause 3 of the Constitution which provides that "No Bill of Attainder or ex post facto Law shall be passed"; and of the first (free speech and association) and fifth (self-incrimination, due process) amendments to the Constitution.

In overruling the *Bill of Attainder* claim, the Court agreed that the singling out of an individual for legislatively prescribed punishment, whether the individual is called by name or described in terms of conduct which, because it is past conduct, operates only as a designation of particular persons, would constitute an attainder. However, said the Court, the act under consideration does not attach to specified organizations but to described activities in which an organization may or may not engage. The incidents which the act reaches are present incidents. The application of the registration section is made to turn upon "continuingly contemporaneous fact." The act applies to a class of activity only and not to the Communist Party as such. "Legislatures may act to curb behavior which they regard as harmful to the public welfare, whether that conduct is found to be engaged in by many persons or by one." So long as the persons who engage in the regulated conduct can escape regulation merely by altering the course of their own present activities there can be no complaint of an attainder.

As to *first amendment* freedoms of expression and association, the majority held that there was no improper impingement upon any of these freedoms. The Court said that the present statute does not "attach the registration requirement to the incident of speech, but to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement—operation which, the Board has found here, includes extensive, long-continuing organizational, as well as 'speech' activity." While the Court agreed that compulsory disclosure of the names of an organization's members may in certain instances infringe constitutionally protected rights of association, it said that where such disclosure has a substantial bearing upon a Federal interest—as here, the security of the Nation against foreign danger—congressional power may be appropriately exercised.

Mr. Justice Frankfurter pointed out that in a number of situations in which secrecy or the concealment of associations has been regarded as a threat to public safety and to the effective, free functioning of our national institutions, Congress has met the threat by requiring registration or disclosure. He cited as examples the Federal Corrupt Practices Act, upheld in *Burroughs* v. *United States*, 290 U.S. 534; The Federal Regulation of Lobbying Act, upheld in *United States* v. *Harriss*, 347 U.S. 612. Likewise a State statute, directed against the Ku Klux Klan, requiring disclosure of membership lists, was held not to offend the 14th amendment due process clause in *New York* v. *Zimmerman*, 278 U.S. 63.

The Court concluded: "Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support, * * * it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask."

It is significant that only one of the dissenting Justices, Black, took the position that the Act was violative of the First Amendment. One of the dissenters, Justice Douglas (with whom Justice Brennan concurred) said on this issue:

"If lobbyists can be required to register, if political parties can be required to make disclosure of the sources of their funds, if the owners of newspapers and periodicals must disclose their affiliates, so may a group operating under the control of a foreign power.

"The Bill of Rights was designed to give fullest play to the exchange and dissemination of ideas that touch the politics, culture, and other aspects of our life. When an organization is used by a foreign power to make advances here, questions of security are raised beyond the ken of disputation and debate between the people resident here. Espionage, business activities, formation of cells for subversion, as well as the exercise of First Amendment rights, are then used to pry open our society and make intrusion of a foreign power easy. These machinations of a foreign power add additional elements to free speech just as marching up and down adds something to picketing that goes beyond free speech.

"These are the reasons why, in my view, the bare requirement that the Communist Party register and disclose the names of its officers and directors is in line with the most exacting adjudications touching First Amendment activities."

Of significance (particularly in the light of *Albertson and Proctor* v. *SACB*, 382 U.S. 70, decided November 15, 1965) was the Court's disposition of the party's *fifth amendment* claim, asserted on behalf of unnamed officers, that an order requiring the party to register would incriminate its officers, both those obliged to register the party and those obliged to register *for* the party if it failed to do so. The Court held that such claims were premature, and not "ripe for adjudication" in this proceeding. As to registration by the party (through its officers), the Court said it is not known whether its officers would ever claim the privilege against self-incrimination which, the Court pointed out, normally must be claimed by the individual who seeks to avail himself of its protection. When the order becomes final, the party's officers may file registration statements, or they may claim the privilege in lieu of furnishing the required information. If a claim is made, it may or may not be honored by the Attorney General, but the Court cannot on the basis of supposition proceed to adjudicate fifth amendment claims.

As to duties imposed upon officers obliged to register *for* the party if the party fails to register, these duties will not arise until and unless the party fails to do so. Present adjudication of such claims is therefore "wholly contingent and conjectural." The Court said, "There is nothing in the case which justifies advisory adjudication of self-incrimination questions prior to the time when a demand for information has been, at the least, made and resisted."

The four dissenting Justices, in separate opinions, each took a contrary view, holding that the registration provisions of the act were violative of the fifth amendment privilege against self-incrimination.

Only one Justice, Black, expressed the view that the act was violative of the Bill of Attainder provision of the Constitution.

Albertson and Proctor v. Subversive Activities Control Board

382 U.S. 70, decided November 15, 1965

The opinion for a unanimous court was delivered by Mr. Justice Brennan. Mr. Justice White took no part in the decision in this case.

The Communist Party refused to register with the Attorney General as required by final order of the SACB (*Communist Party* case, 367 U.S. 1). Consequently no list of party members was filed by it as required by section 7 of the Internal Security Act. In default of the party listing its members, section 8 of the act imposes a duty on each member of the Communist Party to register himself. If the member fails to do so, the act authorizes the Attorney General to petition the Board for an order requiring him to register.

Following the failure of the members to register, the Attorney General petitioned the SACB for orders requiring various high-level Communist Party leaders, including two named Albertson and Proctor, to register as members of the Communist Party. In answer to the petition, Albertson and Proctor, as well as the others, asserted the self-incrimination privilege under the fifth amendment. The Attorney General rejected their claim. Hearings followed, but neither Albertson nor Proctor nor the other party leaders testified at them. The SACB entered

orders requiring each of them to register. Albertson and Proctor appealed and again asserted the privilege in the court of appeals. The court of appeals affirmed the orders of the Board. On review in the Supreme Court, they made several constitutional challenges to the validity of the SACB orders, but the Supreme Court expressly confined itself to their contention that the orders violated their fifth amendment privilege against self-incrimination. On November 15, 1965, the Supreme Court held the orders invalid on that ground.

The Supreme Court noted that the court of appeals had affirmed the SACB orders that Albertson and Proctor register without deciding the self-incrimination issue, expressing the view that under the Supreme Court's decision in the *Communist Party* case, the issue would be ripe for adjudication only in a prosecution of a member for failure to register pursuant to an SACB order. The Supreme Court disagreed. It said:

> "In *Communist Party* the Party asserted the privilege on behalf of unnamed officers—those obliged to register the Party and those obliged 'to register for' the Party if it failed to do so. The self-incrimination claim asserted on behalf of the latter officers was held premature because the Party might choose to register and thus the duty of those officers might never arise. Here, in contrast, the contingencies upon which the members' duty to register arises have already matured * * *. As to the officers obliged to register the Party, *Communist Party* held that the self-incrimination claim asserted on their behalf was not ripe for adjudication because it was not known whether they would ever claim the privilege or whether the claim, if asserted, would be honored by the Attorney General. But with respect to the orders in this case, addressed to named individuals, both these contingencies are foreclosed. Petitioners asserted the privilege in their answers to the Attorney General's petitions * * * . Thus, the considerations which led the Court in *Communist Party* to hold that the claims on behalf of unnamed officers were premature are not present in this case."

The Court indicated that it was further persuaded that the self-incrimination claims were ripe for decision in this proceeding because, upon entry of the order to register, each day of failure to do so constitutes a separate offense punishable by a fine of up to $10,000 or imprisonment up to 5 years, or both. The Court said that Albertson and Proctor should not be required to await prosecution to have an adjudication of their self-incrimination claims, or be denied the protection of the fifth amendment privilege, by imposing upon them the duty of making a choice between incriminating themselves and risking serious punishment for refusing to do so.

Communist Party v. *United States*

U.S. Court of Appeals, D.C. Circuit, decided March 3, 1967

The opinion was rendered by Judge McGowan for a panel of the U.S. Court of Appeals for the District of Columbia. Prettyman (in a separate opinion) and Danaher concurred.

The 1953 order of the Subversive Activities Control Board requiring the Communist Party to register as a Communist-action organization became final in 1961 after the decision of the Supreme Court in *Communist Party* v. *SACB*, 361 U.S. 1. It then became the duty of the Communist Party to register itself as such and to file a registration statement, which would include, inter alia, a list of its members. The Attorney General, given the power to prescribe by regulation the form to be used for such purposes, prescribed forms to be signed by an officer of the organization, or by a "member, employee, attorney, agent, or other person."

Faced with these requirements, the Communist Party caused a letter to be forwarded to the Department of Justice on a letterhead showing the party's name, address, and telephone number. The letter was signed in the name of the Communist Party, "by its authorized officers," but did not name them. It advised the Department that its officers declined by reason of the fifth amendment privilege to supply or to authorize the supply of any additional information called for by the registration requirements. The letter also advised that the Communist Party, on behalf of its members, asserted the privilege of each of them against self-incrimination by the listing of his name or the furnishing of the other information called for. The government rejected this claim of privilege.

On December 1, 1961, the Communist Party was indicted under section 15

of the Subversive Activities Control Act of 1950 (Title I, Internal Security Act of 1950) for failing to register as a Communist-action organization. The party was convicted.

This conviction was reversed by the court of appeals on December 17, 1963, on the ground that the self-incrimination privilege was available to, and adequately asserted by, the officers of the party, and that to the extent registration could be effected by an "agent" or "other person," conviction must at the least rest upon proof of the availability of such a person.

The case was remanded to the district court "with instructions to grant a new trial if the Government shall request it; or, absent such a request, to enter a judgment of acquittal." (331 F. 2d 807, *cert. denied*, 377 U.S. 968). The Government requested a new trial. Meanwhile, in light of the fact that each day of failure to register constituted a separate offense, a second indictment was returned against the party on February 25, 1965. The party was then tried and convicted on both indictments.

At this trial the Government sought to supply the deficiencies of proof alluded to in the opinion on the reversal under the first indictment. This proof consisted of two witnesses who had joined the party in 1953 and who had served as FBI informants throughout their periods of membership. Each testified to a willingness to sign the registration forms and to supply the requisite information if it were made available to them.

The court of appeals, in reversing the convictions of the party, said that the trial record was devoid of any suggestion of the availability of any officer or member of the party, or of any third person, with access to necessary information, who has the requisite *authority* and *capacity* to supply the information called for, or who is prepared to do so. It held that the Government cannot consistently with the fifth amendment "collectively" punish persons for their constitutionally protected rights as individuals to refrain from action that would incriminate them.

The court of appeals took cognizance of a number of decisions dealing with business corporations and labor unions which held that the constituent individuals by reason of claim of privilege cannot be excused from providing records belonging to the entity and kept in the course of its business. The court distinguished these cases on the ground that, unlike business corporations and trade unions, officers and members of the Communist Party operate in a "climate of criminality." *Each* member is exposed to a serious and substantial "threat of prosecution." As pointed out in the *Albertson* case, "mere association with the Communist Party presents sufficient threat of prosecution to support a claim of privilege." The only people with *authority* and *capacity* to compile authentic information for registration purposes would by that very act subject themselves to like threat. Moreover, in areas of first amendment concern, such as politics and religion, the court said that it saw no necessity to limit the reach of the fifth amendment "by technical theories of artificial legal personality." Under such circumstances, said the court, to differentiate between the criminal punishment of the association and the individuals who make it a collective personality would be incompatible with the purposes underlying the fifth amendment.

The CHAIRMAN. I hope we have enough copies to give to the members.

All right. I understand that the members have these documents.

And now, gentlemen, it is my great pleasure to call as the first witness this morning the great Congressman from the great State of Missouri, Dr. Hall.

Doctor, it is such a pleasure to listen to you on these bills, because I know your deep feeling concerning the subject matter of this legislation.

Come forward, please, and in your own way, file a statement or talk—any way you want.

Mr. TUCK. Mr. Chairman, I would like to say that I regard Dr. Hall as one of the most useful and distinguished Members of the Congress, certainly one of the best informed and most diligent, and I regard him also as an outstanding American citizen.

I am delighted to be able to welcome him to testify before our committee.

The CHAIRMAN. Well, I feel similarly honored, I assure you.

STATEMENT OF HON. DURWARD G. HALL, A U.S. REPRESENTATIVE FROM MISSOURI

The CHAIRMAN. Proceed, Doctor.

Mr. HALL. Well, Mr. Chairman, I must greet you this morning with some temerity, after your opening statement with great humility, as I appear before this distinguished committee of legally trained minds, who through the years have demonstrated their interest in people's individual rights and certainly those of the people of our Nation.

Had it not been for you and statements such as the learned opening statement the chairman has just made, our Nation would be in even more dire throes at this time than it now is.

Therefore, as one Representative of the Republic, I compliment the chairman not only on his opening statement, but the committee as a whole on its holding of these hearings. And as a nonlegally trained mind, I thank you for my long association with the committee, with its staff, those who have gone before and here present, who have been of such assistance to my constituency whenever called upon and who have served above self the best interests of the Nation.

And I want to thank you also for the opportunity, gentlemen, of appearing before you and making my views known on H.R. 10390, submitted by the distinguished chairman, and the companion bill, H.R. 10391, of which I am one of 50-some-odd sponsors.

Now you are all aware of the purpose of this legislation, and the fact that it is to amend certain provisions of the Internal Security Act of 1950.

In my opinion, the essence of the bill, as the distinguished chairman has outlined so beautifully and in such fine judicious opinion and his perceiving thoughts, is to allow us to keep more careful surveillance and control upon those that are members of the Communist or Communist-controlled organizations.

And I am simply repeating this for emphasis. A principal suggested amendment contained within this proposed legislation would make the Internal Security Act conform with the 1965 Supreme Court decision, holding that an individual would not have to register individually, under the act.

And I am well aware that the chairman has just been over this in his opening statement, and said it better than can I.

But this amendment does restore the effectiveness of the 1950 act regarding registration by the very act of eliminating self-registration. It would now require the Attorney General to keep a register of organizations and individuals found to be Communists or Communist dominated and controlled by the Subversive Activities Control Board, after adversary proceedings, which include all the elements of procedural due process.

And I might say parenthetically that I have a bill before the Committee on the Judiciary at this time concerning rights of individuals and due process, prior to commitment to hospitals of the Department

of Justice or other systems, in order to determine their reasonableness and fitness to stand trial or whether or not indeed they are of unsound mind, with a pre-judicial determination.

The CHAIRMAN. You mean individuals in hospitals such as in veterans' hospitals, and there because of the necessity to be there because of their alleged condition in order to derive gratuities from the Government?

Mr. HALL. No, Mr. Chairman, I am talking about the man really that is committed prior to judicial determination.

The CHAIRMAN. Oh, I see.

Mr. HALL. By a recommendation to a judge, in order that he might make a pre-judicial determination before commitment to a Federal hospital for defective delinquents, such as the U.S. Department of Justice hospital in my home town of Springfield, Missouri, to determine if indeed he is unsound of mind or not, in committing of the act, or whether he should stand trial for the same.

Mr. ICHORD. Mr. Chairman, I suppose that bill rose out of the General Walker case. Is that correct, Dr. Hall?

Mr. HALL. Well, I am familiar with that case, but I am also familiar with the case of the lead from the Department of Agriculture that turned up the Billy Sol Estes case, and many others who have been committed on virtue of hearsay evidence and recommendation of the Medical Director of the Department of Justice, over a telegram, perhaps, from the Attorney General, rather than through a pre-judicial determination.

I have never yet mentioned that case to which the distinguished colleague from Missouri refers.

Mr. ICHORD. What was the final disposition of the General Walker case?

Mr. HALL. It was nol prossed and dropped on insistence of attorneys, both from his home, the district where the alleged crime was committed, and lawyers from our part of Missouri who joined in the defense.

Mr. ICHORD. As I recall, though, he was incarcerated in the Springfield hospital without the benefit of a hearing. Is that not correct?

Mr. HALL. That is correct, and without complying with section 4244 of the Code.

Mr. ICHORD. Without commenting on General Walker's beliefs or his activities, I know that I was very concerned about the precedural due processes that were used in getting him into the hospital.

Mr. HALL. Well, I will tell my colleague I happened to be in the district at the time and did visit the institution the next morning, and there were no due processes practiced, and he was committed, by admission of the warden, on the basis of a telegram.

The CHAIRMAN. I think I follow you, and yet, by comparison, and as a contrast, on the court decisions, a person said to have violated a criminal statute, adopted by the Congress, is surrounded with all kinds of protective measures: he must not talk without a lawyer and he has to be warned before talking. In other words, right now it is almost against the law to confess and tell the truth. It is almost impossible to confess crime now.

Mr. HALL. I couldn't agree with the distinguished chairman more. I am sorry we got off away from our other bill in discussion of this

question of individual rights, but it so imbues the committee and the chairman, who has so aptly described some of the rulings to our Highest Tribunal as mental gymnastics, that I couldn't agree with him more, and I support that statement 100 percent; but there is a corollary wherein, if we do not exercise this control and surveillance and oversight and review, if you please, that this distinguished committee does, over the Department of Justice, we may allow the corollary to come into play which fails to make prior judicial determination of unsoundness of mind prior to incarceration; and once incarcerated, it is sometimes difficult to get out because of the tenuous toils of justice, especially if a psychiatric examination is involved. I am sure the distinguished chairman of the committee will agree with me about this.

It happens, of course, but I am particularly interested in this not only because this Department of Justice hospital for defective delinquents is located in my hometown, but as the distinguished chairman knows, I am a physician and, furthermore, had my internship here in St. Elizabeth's Hospital, which at that time served the same purpose for the Department of Justice in its highest criminal restraint ward known as Howard Hall.

It has since been transferred to Springfield, Missouri.

Now, Mr. Chairman, using that simply as an example and as a point of my personal interest in the rights of the individual and due process, I shall go ahead. I would say that I do not want to take this distinguished committee's time in reviewing all the various provisions of this legislation, for I know that you are much more familiar with it than am I, and we have the chairman's opening statement to attest to this fact.

But I would like to address some remarks toward the compelling reasons, in my opinion, for enacting this legislation and for considering new legislation.

Originally, and presently, the Internal Security Act was designed to combat outright Communist subversion, or subversion carried on by their front organizations.

Now, in my opinion, in the past few years we have observed the emergence of a new type of subversive organization, and I refer to the militant violence-oriented racist group. These organizations are continually in the news.

They advocate guerrilla warfare within our cities. They preach wholesale burning of our cities. They advocate the overthrow and even the death, Mr. Chairman, of constitutionally elected officials. They advocate the overthrow of government by law throughout the Nation.

The CHAIRMAN. That is right, and there, of course, you are reaching a very sensitive nerve in our society, but let me say this: In October of 1965, or earlier, the House of Representatives approved this committee's plans to have a full-scale investigation of the Ku Klux Klan organization in this country.

It was said, "Oh, Ed Willis is not interested in hurting the KKK. What he is after is to destroy the civil rights leaders."

But this committee somehow euchred these critics, Doctor. One of the greatest compliments paid to me was when Clarence Mitchell, the representative of NAACP in this great city, sat where you are and

paid high compliments to this committee for being objective in our task of ferreting out the activities of the Ku Klux Klan organizations.

Now in October of last year, October of 1966, I directed the staff to make a preliminary inquiry into what—if any—subversive elements were at play in connection with the riots with which we have been plagued, and I appointed Governor Tuck, at my right, and Albert Watson of South Carolina, at my left here, to oversee the preliminary inquiry.

I was asked on TV recently, "What do you mean by subversive elements at play?"

I said, "I mean this: In the context of that statement, in the context of what I had in mind in taking a look at what, if any, subversive elements were involved in connection with riots that have plagued us, that the words 'subversive elements' are much, much broader than 'Communist elements,' because," I said, "for instance, when we investigated the Ku Klux Klan, I found nothing communistic about it, but I surely did, as a southerner, find a lot of subverting of our way of government about the KKK's secret organizations."

So last week, when I was interviewed, I said, "Now by subversive elements I mean elements at play in the riots that could be communistic, but could also be the Black Panthers."

I said, "We are going to name names. I was not cowed into not naming names, as a southerner, when I investigated the KKK. I am not going to be cowed into not calling the Black Panthers, and others, what they are, in connection with the hearings we are going to have with reference to what, and to what extent, subversive elements are involved in these riots."

Now I fully realize that other committees have started investigation. As a matter of fact, I have been very, very observant of the rules in order not to have an invasion of jurisdiction by this committee of the Senate Judiciary Committee or Senator McClellan's commitee, and so on. But we have actually been working on this proposition for the last 10 months, and Governor Tuck and Albert Watson have made a tremendous contribution to our country, I think, because recently they rendered a report and said that the situation was such that we ought to have, and we shall have, I promise you, some open hearings in connection with that. And we are going to let the chips fall where they may.

Mr. HALL. Well, again, Mr. Chairman, I certainly compliment the committee on this action. I am familiar with it. I did audit the hearings on the other organizations in both '65 and '66. I have a deep personal interest in this and, like yourself, I am willing to let the chips fall where they may as we hew to the line and name names.

Certainly, my statement that we ought to reach those organizations that advocate the overthrow of constitutionally elected government throughout the Nation does not apply to those who have commended this committee for their past actions.

And I will say, parenthetically, that I worked with and have respect for the NAACP, as long as 25 years ago, when I was in the executive branch, and have found them level-headed, with both feet on the ground. This was during World War II, when we were mobilizing the Army for our greatest effort, that I first made this contact.

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. HALL. One thing, Mr. Chairman, no one has ever accused your committee of being one-sided. It does attempt to hear both sides, and again you are to be complimented.

But it is my understanding of the Internal Security Act that it pertains only to Communist groups or Communist-controlled groups; and due to no evidence or substantial lack of evidence, these racist organizations do not fall within the purview of Communist control, and thus within the language of the act.

Therefore, Mr. Chairman, I wonder if the time has not come to broaden the concept or definition of subversion. As you yourself have said about another organization, it really does upset or subvert our system of government; or to change our concept of the term "Communist-controlled," so that this term, "Communist-controlled," will apply to the Registration Act, to these race and violence mongers who preach insurrection and interference with the laws of the land, such as the Selective Service Act, and, in fact, preach death and riots, sedition, and anarchy.

Mr. Chairman, I believe that time has come.

And finally, Mr. Chairman, the bills before your distinguished committee, H.R. 10390 and 10391, will expand the powers—I emphasize and repeat, will expand the powers—of the Subversive Activities Control Board. And I wish to do that, because that may, in turn, allow them an opportunity to meet more frequently and, in turn, will allow the taxpayers to receive their money's worth; and I say this with neither partisanship nor political feeling, Mr. Chairman, of the services of the newly appointed Mr. Simon H. McHugh, Jr.

I say it because I think it is my duty to my constituents in Missouri and the people in general to say to you that the people are worried over this man's qualifications. Not only do the taxpayers want to see services rendered for their tax dollars by Mr. McHugh and the Subversive Activities Control Board, which it will do if we broaden their powers, but many of the people don't relish the idea of paying him $26,000 a year for any purpose for which he may be appointed, if it isn't to work in an expanded capacity.

Now, adoption of this legislation would insure a more productive workload for all members and staff of the SACB and, therefore, would provide a great service to the Nation.

It would perhaps, if properly prosecuted, make bills and/or legislation to outlaw the Communist Party, U.S.A., unnecessary. And before you today, sir, is a gentleman who in four Congresses has submitted such a bill.

I am afraid the lone Member.

It would, in addition, slow down our present turmoil. It is time to speak softly and carry a big stick, if I may borrow an aphorism. In my opinion, I believe this distinguished committee believes this, and I feel I know the people of our Nation believe this. And again, Mr. Chairman, I thank you for this opportunity.

Mr. ICHORD. Mr. Chairman.

The CHAIRMAN. Mr. Ichord.

Mr. ICHORD. Before having to leave, there was one question I wanted

to ask our distinguished colleague. I, too, join with the chairman and Governor Tuck in welcoming Dr. Hall to this committee.

I have the honor of serving on the House Committee on Armed Services with Dr. Hall, and it is an honor to serve with him. He is a very valuable member of that committee.

Dr. Hall, the bill before the committee attacks one of the most difficult problems the American people have ever faced, and that is, how to constitutionally and legally protect ourselves from internal subversion and still preserve the constitutional liberties and freedoms which we all cherish so much.

I haven't been too critical of the recent appointments to SACB. I think it is true that the SACB is not earning its money; the members are not earning their salary; but I don't believe that is the fault of SACB. I think that would have to be attributed to the Supreme Court, and perhaps to this Congress.

Now——

Mr. HALL. If I may interpolate right there, that is exactly why in the last part of my statement I say so firmly I believe we should broaden their powers, increase their activity, and enlarge their horizon.

I agree with the gentleman.

The CHAIRMAN. The Chair might say I hope that will be the result, and I hope, Doctor and Ike, that you will join me in importuning the Attorney General to keep pressing for more and more proceedings to effect the purposes of the act.

Let us keep them busy from now on.

Mr. ICHORD. Dr. Hall, this is a very difficult field in which to legislate. I might note that I have just filed a dissenting report to the chairman's anti-Ku Klux Klan bill. Not because I think that the Ku Klux Klan is a reputable organization—I think it is a despicable organization, but I am concerned about some of the language in the bill. Much of the original language in the bill has been amended, but I thought that under the original language it would have been exceedingly dangerous to be a member of the Knights of Columbus or the Masonic Lodge, clandestine organizations.

The CHAIRMAN. Well, I couldn't disagree more, because clandestine has nothing to do with secrecy.

Mr. ICHORD. Well, that is beside the point.

I wanted to ask this question: What will be the penalties, if any, that will attach to a finding of the SAC Board that a person is a member of the Communist Party or a Communist-front organization?

Will there be any penalties?

Mr. HALL. Well, as the gentleman well knows, on page 14 is the penalty section, under section 15, line 6, which simply says "Any organization"—I emphasize—"any organization which violates any provision of section 10 of this title shall, upon conviction thereof," thereby leaving the prosecution to the Attorney General and his staff and a finding of a court and judicial determination, "be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of section 5 or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not

more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment."

Mr. ICHORD. Of course, the finding itself is just a disclosure.

Mr. HALL. That is correct.

Mr. ICHORD. He registers, and that is the public registry.

Mr. HALL. That is correct, but there has been, I am sure the distinguished colleague knows, some difficulty of getting the Attorney General, in view of the most recent High Tribunal decisions as to the first and fifth amendments, to prosecute within the original intent of legislation, the listing or the revelation or the findings of such people in subversively controlled groups, and I would hope that this would strengthen that power and that determination.

Mr. TUCK. The object of this legislation is to identify those groups and people so we will know who they are and know where the danger lies. Isn't that right?

Mr. HALL. That is correct, I will say to the distinguished Governor and constitutional lawyer. Then I would leave it to the surveillance and oversight of this committee and the Committee on Judiciary, with which it is so closely related, to follow through and see that the head of the Department of Justice does follow his interpretation and prosecute the legislative intent of the Congress, because I am one of the people that believes the Congress, being elected of, by, and for the people, can still instruct the other branch as to its intent.

Mr. ICHORD. Well, this Member has joined with the chairman in the introduction of this bill, because I certainly think there is a need for it. But I want to be certain that the rights of the individual who is called before the Subversive Activities Control Board are protected, because we all have many political beliefs which may or may not conform with the views of the majority.

I have many political beliefs which do not conform to the majority of Congress. Obviously I do, because many, many times I vote with the minority. But I want to be certain, though, that we do not set up proceedings where the majority in control can punish me for my political beliefs.

Mr. HALL. Mr. Chairman, I certainly agree with that, and I yield to no one as far as rights of the individual are concerned. I, too, believe in this, but I believe that the expertise in this committee can construct such wording, and I think we have come much closer than ever before in the history of our representative Republic to doing so in these bills, that it will be interpreted favorably and that we can accommodate and adjust to the requirements of the many, while protecting the individual rights of the individual.

We referred once more to a bill that I have introduced, that does just that very thing. I have been accused of being liberal, because of submitting this bill, but if the defense of individual people's right to due process, to call an attorney, to rely on the Constitution, to use the writ of habeas corpus is liberal, then so be it, and I am one.

I think this is conservative in maintaining principles of our Constitution.

Mr. ICHORD. The Constitution itself is a very liberal document.

Mr. HALL. That is correct, and its greatest liberality is that there are three ways with which it can be changed from within, and I might say this is also ingenious.

Mr. Chairman, having made that statement in answer to my esteemed colleague from Missouri, I would have to disqualify myself further as far as being a bill-writer or a legally trained mind, because you well know I am just a ridge-runner surgeon that does believe in these rights and I am willing to speak out for them.

Mr. ROUDEBUSH. Mr. Chairman.

I would like to join with my colleagues of the majority of this committee in complimenting Dr. Hall, the distinguished Member from Missouri, on his testimony here today.

I would say that no Member of the House has a higher regard for his intellect, his dedication to duty as a Member of this House, and I found his testimony most clarifying in my mind and certainly very well put here before our committee today.

(At this point Mr. Ichord left the hearing room.)

Mr. HALL. I thank the gentleman.

Mr. WATSON. Mr. Chairman.

Certainly I would like to join with all of the members in expressing our appreciation to Dr. Hall. And while you are not a lawyer, I frankly must admit that you have approached this in a very judicious fashion, and I have been tremendously impressed with your knowledge of this particular act and also with your execution of other legislation which you have in mind.

I would only make this point: I believe the thrust of the question of our colleague from Missouri was, since this would be in the nature of an adversary proceeding before the SACB to determine whether or not an individual or an organization would be placed on a subversive list, I think he was trying to determine as to what appellate rights the individual might have.

I think this bill protects them, inasmuch as any organization or any individual has a right under the terms of this bill, to request, should that organization or individual be placed on the Attorney General's list, to request a rehearing, with appeal rights, in order to have his name or that organization's name removed.

So I think the legislation has done a good job in protecting the rights of the individual, while at the same time trying to protect the rights of society about which you and I are so concerned, so I think the bill does provide the safeguards that the gentleman is concerned about over there.

Again I want to commend you for the thorough and the very fine manner in which you have approached this, and I am sure it is going to be very helpful to the committee as we try to consider this legislation and other legislation in this field.

Mr. HALL. Mr. Chairman, I thank the gentleman, and if you would allow me one word, I will simply emphasize that insisting on the right that the distinguished gentleman and jurist from South Carolina refers to was the one thing I checked on before I agreed to cosponsor the bill.

I believe it does just that, and I thank the chairman and the committee.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. James B. Gardiner, vice president general of the National Society of the Sons of the American Revolution.

Mr. Gardiner, we are glad to have you, sir, and look forward to your testimony.

STATEMENT OF JAMES B. GARDINER, VICE PRESIDENT GENERAL, NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

Mr. GARDINER. Mr. Chairman and Members of this Distinguished Committee: I have already submitted a prepared statement, Mr. Chairman. Do you want me to take up the time of the committee to read it?

The CHAIRMAN. You can do that, or you can do either way. I see it is short, so you could read it.

Mr. GARDINER. If you wish.

I am James B. Gardiner of New York City, and am here on behalf of the National Society of the Sons of the American Revolution whose headquarters are located at 2412 Massachusetts Avenue, N.W., Washington, D.C. I am a vice president general of that organization.

The Sons of the American Revolution is a patriotic society, organized in 1889 and incorporated by an act of Congress in 1906. The membership of the National Society consists of approximately 19,300 members, represented by State societies in each of the 50 States.

The president general of our National Society, Mr. Len Young Smith of Chicago, would have liked to be at this hearing today, but unfortunately he is attending the meeting of the American Bar Association in Hawaii and I have been asked to appear in his place.

While it is impossible during the summer period, when there are no meetings of our society, to poll the members on their views, I feel reasonably confident that my statements will be representative of the vast majority of our members.

I have carefully reviewed the committee's analysis of House bill 10390. Speaking on my own behalf and on behalf of what I believe would be the overwhelming opinion of the Sons of the American Revolution, we are strongly in favor of the amendments to the Internal Security Act which would become effective through the enactment of H.R. 10390.

Two of the basic objectives of the National Society of the Sons of the American Revolution are "to maintain and extend the institutions of American Freedom" and "to carry out the purposes expressed in the preamble of the Constitution of our Country." In general, we feel that any steps which will bring out into the open the organizations which foster the widespread Communist activity in this country will be in accord with these objectives. H.R. 10390 is a step in this direction.

A review of the decisions involving the Internal Security Act leads to the conclusion that the courts, in interpreting congressional intent, have construed the statutes very strictly. As a result, the Government has generally had to establish each case on a preponderance of the evidence. The amendments contained in this bill should give the courts a much clearer idea of what Congress intended, at the same time enabling the courts to continue to guard the rights of the individuals involved.

Specifically the bill defines Communist fronts to include those which are operated by members of the Communist Party as well as by the party itself. As we understand it, this portion of the bill would help to solve the problem of proving Communist control of a front organiza-

tion when it is controlled by Communists as individuals, and would therefore relieve the Government of undue burden of proof. Here the bill deals with a difficult situation in a realistic way.

The bill also provides that a dissolved organization can be registered by the Attorney General, thereby remedying the deficiency created by the Labor Youth League decision. We would like to point out in this connection that section 5(a) of H.R. 10390 on page 7, lines 19–20, refers to a dissolved Communist-action or Communist-front organization.

We would suggest that perhaps consideration should also be given to including Communist-infiltrated organizations among those found to be dissolved which the Board may require the Attorney General to register.

The CHAIRMAN. By the way, we will certainly take that suggestion into consideration when we go into executive session to mark up the bill.

Mr. GARDINER. Thank you. I am not a lawyer, so I hope I am not practicing law without a license.

The CHAIRMAN. No; you made a good suggestion.

Mr. GARDINER. The Sons of the American Revolution has consistently taken the position that Communist infiltration at strategic levels of many facets of our political, economic, educational, and religious institutions is probably the greatest danger we have to face today in America. We welcome legislation that will go toward reducing that danger.

I therefore appreciate the opportunity to testify in favor of H.R. 10390 and respectfully urge its enactment.

The CHAIRMAN. Thank you very much, sir.

You have made a good contribution and a fine suggestion.

Mr. GARDINER. Thank you, Mr. Chairman.

Mr. TUCK. I would like to thank the gentleman for being with us, and I would like to say that I have had the honor of being a member for many years of your organization.

Mr. GARDINER. Well, I am glad you are, sir. I wish we had more like you.

Mr. WATSON. Mr. Chairman, I should also like to thank Mr. Gardiner, and while I think the chairman has made a good suggestion that we consider the recommendation of including Communist-infiltrated organizations, as has been recommended, I perhaps am inclined to believe that the Communist-front organization may be inclusive of that, but I think it is worth while in looking into it. And I might say to the gentleman and to others who are concerned about the protection of the individuals' rights, I think this committee in the legislation leans over backwards in that regard.

Mr. GARDINER. Right.

Mr. WATSON. I think, in my judgment, that unfortunately the rights of the citizens in general have not been protected, and the rights of the criminal have been overly protected.

Mr. GARDINER. We agree to that. That is true, sir.

The CHAIRMAN. Thank you very much, sir, and the committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 11:20 a.m., Tuesday, August 15, 1967, the committee recessed, to reconvene at 10 a.m., Wednesday, August 16, 1967.)

HEARINGS RELATING TO H.R. 10390, H.R. 10391, AND H.R. 10681, AMENDING THE INTERNAL SECURITY ACT OF 1950

WEDNESDAY, AUGUST 16, 1967

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The Committee on Un-American Activities met, pursuant to recess, at 10:20 a.m. in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; Richard H. Ichord, of Missouri; John C. Culver, of Iowa; John M. Ashbrook, of Ohio; Del Clawson, of California; Richard L. Roudebush, of Indiana; and Albert W. Watson, of South Carolina.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

The CHAIRMAN. The subcommittee will come to order.

Yesterday, Mrs. Allen, the registered lobbyist of the National Committee To Abolish the House Committee on Un-American Activities, who is present again this morning—and you are welcome, Madam—was seen distributing propaganda literature in the hall and in this very room.

I read it, and there is nothing insulting about it, but still, it is propagandizing people while the committee is in session.

I want it known, Mrs. Allen, that we are not going to tolerate that. This couldn't be done in a court room, or in any official judicial or quasi-judicial proceeding of any kind, and I have spoken to the Parliamentarian about it, and it is a question of the discretion of the Chair.

I choose to exercise my discretion against permitting it, and you are admonished not to do so, and this rule, I assure you, I have the means of enforcing.

However, Mrs. Allen, after the morning's list of witnesses is heard from, with all that you have to say against this bill, I would invite you to be a witness, if you think you can stand the gaff of cross-examination.

Do you care to take advantage of that opportunity?

I said, do you care to be a witness?

Mrs. ALLEN. I am not a witness now.

The CHAIRMAN. I said, would you care to be a voluntary witness?

Mrs. ALLEN. Not before an unconstitutional committee, sir.

The CHAIRMAN. Well, now, that is completely out of order, but I consider the source, so it is all right.

The first witness I would like to hear from this morning is Mr. Robert Morris, president of the University of Plano, in Plano, Texas, and former general counsel, Senate Internal Security Subcommittee.

Mr. Morris, we are delighted to have you, and you may proceed at your choice. I think you have a very short statement. This is also welcome, and you may read it, and we will follow you, and after that, speak from it. Either way you want.

STATEMENT OF ROBERT MORRIS,[1] PRESIDENT, UNIVERSITY OF PLANO, PLANO, TEXAS (FORMER CHIEF COUNSEL, U.S. SENATE INTERNAL SECURITY SUBCOMMITTEE)

Mr. MORRIS. Thank you, sir. At the outset, by way of prefatory remarks, Mr. Chairman, I would like to commend the honorable chairman for his forthright pursuit of his duty in maintaining the high purposes of the House Committee on Un-American Activities.

As a lawyer, and as someone who moves in an academic atmosphere, I can't understand the rationale of those intellectuals who take the position that the House Committee should be abolished.

The CHAIRMAN. Well, for instance, the person I was addressing myself to said that she would not testify before an unconstitutional committee. I challenge any lawyer in this great country of ours, of any political philosophy or persuasion or political beliefs, or what-have-you, to cite one single solitary court decision to justify that statement. That is completely wrong.

On the other hand, I can cite dozens of cases sustaining the constitutionality and the procedure of this committee, and by the way, Mr. Morris, along that line, we took the liberty some few years ago, not many years ago, of inviting a committee of the American Bar Association to study the transcripts of proceedings of this committee and to give its judgment as to the constitutionality of the committee's procedures.

That committee of the American Bar Association unanimously held, and I wish I had the quotation from the finding itself, unanimously held that the committee's procedures were completely constitutional and that its proceedings afforded complete protection to all witnesses' constitutional rights, whether the first, the fifth, or any other amendments.

Mr. MORRIS. On that score, Mr. Chairman, I have been a judge in my time, and I have been a counsel to Senate committees, three different Senate committees for 7 years.

The CHAIRMAN. I knew you were general counsel of the Senate Internal Security Subcommittee.

---

[1] Robert Morris, a former municipal court judge in New York City, received an LL.B. degree from Fordham University in 1939 and a doctor of laws degree in 1954 from St. Francis College in Brooklyn. He is a member of the New York bar and was admitted to practice before the Supreme Court. In addition to the private practice of law, he has served as assistant counsel to the New York State Investigating Committee; as special counsel, and later chief counsel, of the Senate Internal Security Subcommittee; and as counsel to Senators Hickenlooper and Lodge on the U.S. Senate Foreign Relations Committee. Mr. Morris is the author of numerous articles on communism and of the book, *No Wonder We Are Losing*. He is presently the president of the University of Plano.

Mr. MORRIS. Yes, sir.

The CHAIRMAN. That is a parallel committee of the other body of this committee here.

Mr. MORRIS. Yes, but, Mr. Chairman, I find that having been a judge, and having been counsel to three different Senate committees, the witnesses get far more rights and far more privileges in these legislative tribunals than they do in courts of law.

The CHAIRMAN. I might say that this committee is the only committe of the 20 standing committees of the House that has a set of printed rules, and as a witness is subpenaed, that witness is handed a copy of the rules, so that that witness can know exactly what to expect, and exactly how to attack the committee, if they want to, and we get our fair share of attacks.

Mr. MORRIS. But the elemental point I wanted to make, Mr. Chairman, is that there are three elements to the legislative process. One is factfinding, one is deliberation, and one is the act of legislation itself. Each one of the three is indispensable to intelligent legislation. If you don't have a factfinding committee, it is inconceivable that you are ever going to get any intelligent legislation.

The CHAIRMAN. I think it was President Woodrow Wilson in his book, *Congressional Government*, who said that the committee work or the informing function of Congress was more important than the legislative function. And Truman it was who said that an informed Congress is an intelligent Congress.

Now maybe we don't have the intelligence that some people desire, but at least we try to keep ourselves informed.

Mr. MORRIS. Well, that was the point. You can criticize a committee, but how can you, with a sense of intellectual honesty, how can you say there should be no such committee to find the facts on such a vital area of importance to the Nation?

The CHAIRMAN. Well, they are just against us, that is all.

Mr. MORRIS. Shall I proceed, Mr. Chairman?

The CHAIRMAN. Please.

Mr. MORRIS. The tactical approach of the Internal Security Act of 1950 must be revised without varying the fundamental strategy. While the original approach called for registration of Communists that would trigger a series of sanctions, the courts have vitiated this effort by ruling that such a tactic violated basic fifth amendment rights.

The same purpose could be achieved by simply making the findings of the SACB, rather than the registration or the order to register, the action that would set in motion the remedial provisions of the bill.

The CHAIRMAN. Well, let me tell you how we attacked the problem, what approach we took.

Mr. MORRIS. Yes.

The CHAIRMAN. As you know, the Internal Security Act of 1950 set up the Subversive Activities Control Board. The act contemplated that any person alleged to be a Communist Party member would have an adversary proceeding before the Board, and it was up to the Board, as a quasi-judicial body, to find as a fact whether that person is or is not a member of the Communist Party. Then that person was required, under the act, to register as a member of the party if the SACB found him to be one.

Now as to the question of disclosure, as I pointed out yesterday, disclosure proceedings are permeated throughout our functions of Government. For instance, lobbyists, hundreds of them, in America, have to disclose who they are, and what their functions are, even what their pay is, and so on.

Newspapers, in one of their issues each year, must disclose their ownership, and so on, under the law. Under the labor laws, the unions must file with the Secretary of Labor annual financial reports and statements, and union officials earning more than a certain salary must do likewise.

So following that pattern, the act of 1950 required the Communist Party and its officers and members to register. Nothing outrageous about that.

It is throughout our economic and political life. You have to register to vote whether you are a Democrat or Republican; you have to register for food stamps. Registration or disclosure permeates our system of government.

So we didn't think it was too horrifying, or horrifying in the least, to have a registration provision in the act.

It was President Truman's Commission on Civil Rights which held that the way to get at the enemies of democracy is to have a disclosure procedure.

Now having held that the disclosure procedure itself was constitutional, the Supreme Court held that on invoking the fifth amendment, nobody can be compelled to register.

We completely respect that Supreme Court decision. The Subversive Activities Control Board is preserved under our bill, and by the way, this bill was introduced under the new rule of the House permitting multiple sponsorship, and over 50 Democrats and Republicans joined us in the introduction of this bill. That is what the House generally thinks about the Internal Security Act of 1950.

Well, in order to completely respect the Supreme Court decision and to preserve the fifth amendment rights of people as interpreted by the Supreme Court, these bills, instead of requiring the defendants themselves to sign a register, requires the Attorney General to be the bookkeeper, as I have told the Attorney General yesterday, and requires, after proceedings before the Board, requires the Attorney General to keep an actual register of persons found by the Board, the names and addresses of persons found by the Board, to be members of the Communist Party—and that was the original intent of Congress.

And by the way, if I had been a Justice of the Supreme Court, I would have voted with the majority to hold that under the fifth amendment you can't be compelled to register, because to me—my reasons may have been different than those of many people—but to me, to be a Communist is such a heinous and degrading thing that I would not support compulsion to have anybody sign that he is a member of that heinous conspiracy.

And so we found a way to comply with the decision, and instead of requiring self-registration, to have the Attorney General keep the books and to register those found by the Board to be members of the conspiracy.

Thank you, sir. I am sorry to interrupt, but I just want to tell you the structure.

Mr. MORRIS. I understand your purpose, Mr. Congressman.

Now, this tactic, that is, making the findings of the SACB rather than the act of registration or the order to register the triggering of the sanctions, I say, this tactic would have all the advantages and none of the legal disadvantages of the registration route. The basic purpose of the act thus would remain reasonable disclosure of the conspiracy.

After reading the proposed legislation introduced in the Senate and the House——

The CHAIRMAN. By the way, I just heard on TV last night, after we introduced this bill, Senator Dirksen in the other body introduced a similar bill.

The Senate, by a vote of 11 to 2, I think, or some such overwhelming vote, the Senate committee has already approved this bill.

Now it is a question of who is going to get to the floor of the Senate or the House first.

Mr. ICHORD. Mr. Chairman, will the chairman yield?

The CHAIRMAN. Yes, surely.

Mr. ICHORD. I believe the gentleman is well acquainted with the differences between the Dirksen bill and the bills that have been introduced and are now pending before this committee. I would like for the gentleman to go into those differences.

Mr. MORRIS. Well, I was just about to say, Mr. Congressman, I believe that the Dirksen bill S. 2171 more simply achieves this goal and with less chance of endless litigation.

Mr. ICHORD. Why?

The CHAIRMAN. Will you explain that? Because I am interested in that.

Mr. MORRIS. Yes, I will.

Your bill sets up a changed definition of a Communist-action organization, and I agree with it. It is an excellent revision.

The CHAIRMAN. You mean of the definition.

Mr. MORRIS. Of the Communist-action organization.

The CHAIRMAN. The Communist front, rather.

Mr. MORRIS. Yes, Communist front.

The CHAIRMAN. Communist front.

Mr. MORRIS. Your original description of a Communist-front and a Communist-action organization.

The CHAIRMAN. Was too tight?

Mr. MORRIS. And I think that it is a commendable and praiseworthy and laudable improvement.

The CHAIRMAN. Well, the reason we did that was this: A court held that under the structure of the act of 1950 as written, in order to prove that a certain outfit was an official front, you not only had to prove that the Communist Party members in that front were dominating the front organization, but also that they were acting as the agent of an action organization or of the party itself in doing so.

Now as I said yesterday, I don't know of any instance where the Communist Party would issue an official power of attorney to someone to act in its behalf, but we make it self-evident under this bill that if the front organization is dominated by members of the party and also serves Communist purposes, we need not go further to prove agency.

It is in that respect that we modified the rules.

Mr. MORRIS. Well, as I say, Mr. Chairman, I agree with the excellent amendment, but I make the point that I don't think that time will allow us to improve it for this reason: That the present act has been constitutionally vindicated by the highest Court of the land.

The CHAIRMAN. That is right.

Mr. MORRIS. With one exception, and that is the registration provision.

The CHAIRMAN. Yes.

Mr. MORRIS. Now let us, because time is running out on us, correct that registration provision, and let everything go and ride with it as much as possible, and try to do something about enforcing this law, which is now 17 years old.

The CHAIRMAN. You would not touch the definition of the front at this time?

Mr. MORRIS. Pardon, sir?

The CHAIRMAN. You would not touch the definition of the front at this time?

Mr. MORRIS. For this reason, Mr. Chairman, that you were then opening, as it were, a whole new legal can of worms.

Now this gives the Communists another crack at this thing, it gives you another challenge before the court, who knows that they are going to insist if it has got to be nothing or anything applied on it.

The CHAIRMAN. I am very quizzical, and I put our counsel on the spot on that very question, that I want to be sure that no constitutional prohibitions were presented in the power of Congress to define the front, and I was assured that none was.

Although I am a lawyer myself, of some 41 years, I listened to their advice, and I am told that—I am very much concerned and very much interested in opening up another can of judicial worms, for some brand-new litigation by the Communists.

Mr. MORRIS. Well, it is an invitation to open this whole area up.

Now you and I may not agree that that is a challengeable constitutional point, but based on past experiences, these things have been found, where lawyers have conventionally never foreseen them before.

The CHAIRMAN. Yes.

Mr. ICHORD. Would the chairman yield?

The CHAIRMAN. Yes.

Mr. ICHORD. Yours, then, Mr. Morris, is a practical approach?

Mr. MORRIS. Precisely.

Mr. ICHORD. You feel that the decisions have revealed that a modification of the disclosure provisions alone would be sustained by the courts?

Mr. MORRIS. That is correct.

Mr. ICHORD. And that you are concerned that getting into the matter of a definition of the front might cause the court to go off on a different approach——

Mr. MORRIS. Precisely.

Mr. ICHORD. — and perhaps nullify the provisions.

Mr. MORRIS. I think that these changes, particularly with the experience we have had, are improvements, but I think the status of the cases now that the Supreme Court has said, "Look, there is only one thing wrong with this bill." And that is——

The CHAIRMAN. Now the other side of that coin is that unless we modify the provision of the act vis-a-vis the front, we will never have the court pronounce any organization a front, because they require proof of express agency in interpreting the present definition. How in the devil are you going to prove express agency?

I don't think we can be in a worse shape as to interpretations of the kind of evidence needed to meet the definition of fronts than we are under the present definition as interpreted by the court of appeals.

Mr. MORRIS. Mr. Congressman, my suggestion would result in the situation where the findings of the Board would be issued and order would be issued, disclosure would be made, and then the sanctions would be invoked as a consequence.

Now, at that point, there may be some challenge to the particular finding somewhere along the line, but meanwhile you can get scores of findings and you can have scores of disclosures, and some of these things that are now lying under the surface could be brought to light.

But that would be a subsequent challenge. This other thing would be an initial challenge going into it, you see; it would stop the whole proceeding.

The CHAIRMAN. I see your point.

Mr. MORRIS. And I think, sir, that the issue is that the situation around the country today is so grave that we should take the posture that, "Look, let us save whatever we have out of this; let us make the most of it, and then let the improvement as you suggest go until the next year or the year after," because I think if we do nothing this year, and let these people move in there, the DuBois case is up, these people are threatening to make a motion; let us make a move now and do something, and then begin enforcing it.

Now I don't think that the SACB has been responsible for the lack of enforcement of these things. I think it has been unjustly criticized.

The CHAIRMAN. I think so, too, and I so pointed out yesterday. To criticize the Board for not being kept busy would be to say, if the Board must be demolished and abolished because it has no cases, that would be like abolishing the Supreme Court if ever it arrives at the case where it is current on its docket.

Mr. MORRIS. Well, the Attorneys General have not been bringing the cases before the court. Whatever reasons they have, I don't know, but this is where the situation lies.

I don't mean to be personal. I don't mean this Attorney General—the Attorneys General over the years have not brought enough cases before the Board, and I think this is where the stress should be.

Now this other approach, this very simple approach that I propose, would obviate all of those things, and would strike a note of urgency. You are not going to take issue with the Court any further, you may say, "Well, look, Supreme Court, we are doing exactly what you recommend. We are changing, putting the focal point now on the findings rather than the registration, but for the sake of the security of the country and the security of the United States abroad, we want to get ahead with this right now."

And then so inform the Attorney General that that is the mood of the Congress. Every time this has been voted on, Congress has been overwhelmingly for it. This is the mood of the country. Let us begin

applying these things, instead of having this thing drag on and on and on.

Just imagine the spectacle, Mr. Chairman, of the United States of America not being able to come to a determination from 1950 to 1961, 11 years, that the Communist Party of the United States is Communist controlled.

That is the spectacle we have created abroad. Now how can anyone consider us serious? For whatever reasons? That is why I say, let us strike an emergency posture, let us get on with this thing, let us make the findings instead of the registration the focal point, tell the Board that we want action, tell the Attorney General that you want action; and I think that this will strike the mood of the country.

Mr. ICHORD. Will the chairman yield?

The CHAIRMAN. Yes, surely.

Mr. ICHORD. In the first paragraph of your statement, Mr. Morris, you say, "While the original approach called for registration of Communists that would trigger a series of sanctions, the courts have vitiated this effort by ruling that such a tactic violated basic fifth amendment rights."

I think we should get into the record that you are a former chief counsel of SACB.

Mr. MORRIS. No, sir; I was chief counsel of the Senate Internal Security Subcommittee.

Mr. ICHORD. Senate Internal Security. I am sorry. I stand corrected.

I think we should get into the record the series of sanctions. Now all you are going to do is to modify disclosure provisions, and make the finding the hub of the matter. What are the series of sanctions that would be set in operation by this finding that——

The CHAIRMAN. Well, fines, imprisonment, all kinds of things under the present act if the affected party refuses to register. This bill, however, rescinds all sanctions flowing from refusal to register.

Mr. MORRIS. They are all set forth in the bill, extensively.

Mr. ICHORD. Could the gentleman be more specific? Does he have the statute?

Mr. MORRIS. I don't have it with me.

The CHAIRMAN. In my bill, under the present bill.

Mr. MORRIS. I submit, Mr. Chairman, that I don't have the bill with me, and the whole act with me, but they are all set forth in that, and I just refer to them.

Mr. ICHORD. I am sure that there wouldn't be any fine or imprisonment imposed upon an organization or member just because the SACB made a finding.

The CHAIRMAN. No, no; but under the act, if the member failed, or if the party failed to register, there were fines or imprisonment.

Mr. ICHORD. I still think we would be concerned about the——

The CHAIRMAN. But, of course, that has been struck down by the Supreme Court.

Mr. ICHORD. I know; but still, if there was a finding that they were Communists, this bill doesn't call for the registration by the Communist himself.

The CHAIRMAN. That is right.

Mr. ICHORD. Well, I wonder what the series of sanctions, what I want to get into the record somewhere along the line, we will have some witness who will——

Mr. WATSON. Will the chairman yield? Perhaps in speaking to the question raised by our colleague from Missouri, it was not my interpretation that Mr. Morris was referring necessarily to legal sanctions upon disclosure.

I think basic sanctions would necessarily follow, and that is, the exposé of these people and the Communist involvement, that the public could generally discredit them, and that is the sanction basically that we are looking forward to, rather than the matter of legal sanctions.

Do I interpret your statement correctly in that regard?

Mr. MORRIS. That is right, sir, but I think also they would be, upon the finding of the SACB that a certain organization is a Communist organization, then there could be an enforcement, after the issuance of the order, of the provisions set forth in the Internal Security Act of 1950.

The CHAIRMAN. That is right.

Mr. ICHORD. Now in the second paragraph——

Mr. MORRIS. But it would be conditioned on the finding, rather than on the registration, and that way you are conforming with the mandate of the Court.

Mr. ICHORD. In the second paragraph, you say that this action "would set in motion the remedial provisions of the bill." Of course, there are so many statutes on the books that have been passed in regard to Communist activities, and many have been stricken down by the Supreme Court.

I am wondering what remedial provisions the gentleman is referring to, other than the mere fact of disclosure.

Mr. MORRIS. Well, the ones set forth in the bill, in the act—and not those that are invoked by refusal to register. There are other sanctions, too.

Mr. ICHORD. I beg your pardon?

Mr. MORRIS. The sanctions set forth in the Internal Security Act of 1950, which are extensive. There are fines and——

Mr. ICHORD. Of course, the Supreme Court has been whittling and cutting into those various sanctions for many years.

Mr. MORRIS. That is right, Congressman, and it may well be that later on in the proceedings, after these things take place, but after the findings are held and after they are promulgated and after we get the benefit of all this evidence that now unfortunately lies beneath the surface, then the challenge could be to a particular case somewhere along the line, rather than to the heart of the things which we are talking about here today. That is the gravamen of my position.

Mr. TUCK. In other words, as I understand it, there would be no sanctions unless there was a court finding. There would be no sanctions involved in the payment of any fine, or any criminal punishment, unless a person was tried subsequent to the findings by the Subversive Activities Control Board.

Mr. MORRIS. After the findings there would be litigation, but your issue will have been made, your disclosure will have been made, and then the constitutional issue can be raised at that point, Congressman.

Mr. TUCK. So that, actually, there would be no sanctions except those referred to by the gentleman from South Carolina, sanctions demeaning and denigrating an individual for having found this fact. That is true, isn't it?

Mr. MORRIS. Well, there would be other sanctions. But not the sanctions for failure to register.

Mr. ICHORD. I would like, Mr. Chairman, to have the chief counsel and the staff provide me and the committee with a paper along that line, as to what remedial provision, as the gentleman refers to, would come into operation if we made the changes as proposed in the Dirksen bill.

The CHAIRMAN. Of course, under my bill, sir, you understand that we eliminate the criminal sanctions flowing from refusal to register. In other words, the Board finds as a matter of fact that Mr. A is a Communist. Then the Attorney General registers him as such on a register. Now, thereafter, he is not tried. He can't be tried. My bill contemplates no criminal punishment. Is that correct?

So I don't think that what you have in mind and what my bill provides are too far apart.

Is that correct?

Mr. SMITH. Yes, sir.

The CHAIRMAN. In other words, after the finding and after the registration, there is no prosecution anymore.

Mr. SMITH. No, sir.

The CHAIRMAN. Under my bill, no.

Mr. MORRIS. Well, it could well be, sir, if you have a violation of the law.

The CHAIRMAN. No, no.

There will be no provision for that in the law.

The act of 1950 is modified to that extent. This is going to be the new law. And you are not going to, after a finding by the Board, as a matter of fact, that Mr. A is a Communist, and after the Attorney General as a bookkeeper registers him on the register, there is to be no prosecution, and there are to be no criminal sanctions anymore.

Is that correct, Chet?

Mr. SMITH. Unless he violates other statutes.

The CHAIRMAN. Unless he violates some other law, but not this bill. This is going to be the new version of the act, in this respect.

Mr. MORRIS. Well, I agree, Mr. Chairman, that you should, that by all means, disclosure is the principal point of any legislative effort, as far as the Communists are concerned. I haven't——

The CHAIRMAN. Well, in other words, I think my bill is not too far away from what you have in mind already, because after the disclosure, that is the end of it. Except the keeping of a public register, but that is all there is to it. There is no more prosecution for a failure to register, there are no more criminal penalties on that point.

That is the new act and the new Subversive Activities Control Act, in this bill.

I don't think really that we are far apart.

Mr. MORRIS. Well, you have made the point. I wasn't quite aware of the fact that you were eliminating all the sanctions of the original 1950 bill at the same time.

The CHAIRMAN. That is accomplished in section 8 of the bill, and I am reading the analysis of the section 8. Listen to what sanctions are retained only.

Mr. MCNAMARA. "Section 8 of the bill amends section 15 of the Internal Security Act of 1950 relating to penalties for violations of Title I of the act. The amendment retains penalties for the following offenses only"——

The CHAIRMAN. The following only.

Mr. MCNAMARA. —"(1) violations of section 10 of the act, relating to use of the mails and instrumentalities of interstate or foreign commerce"——

The CHAIRMAN. Which has not been attacked by the Supreme Court.

Mr. MCNAMARA. —"and (2), violations of section 5 of the act, relating to employment of members of Communist organizations by the United States, defense facilities, and labor organizations."

The CHAIRMAN. And which has not been struck down.

That is right.

Mr. MCNAMARA. Under "defense facilities," there have been some problems.

The CHAIRMAN. Under "defense facilities," there is a case presently pending, but really, I think I have said enough of it by saying that after the finding by the Board, and the registration or the disclosure, that is the end of it, under this bill.

There is to be no prosecution. There is to be no fine, no imprisonment, nothing on the registration issue.

Mr. MORRIS. Well, my point, Mr. Chairman, and as again I don't cite a difference of principle, I am just prescinding from the question of sanctions, I am just putting the focal point on the finding rather than the registration, and getting on with it, with an emergency note struck.

The CHAIRMAN. Well, do you find any objection to the Attorney General keeping a list?

Mr. MORRIS. Well, I don't think that is where——

The CHAIRMAN. That is the only thing he is to do. He is to be a bookkeeper.

Mr. MORRIS. Except that right now, he does keep a list; doesn't he, Mr. Chairman?

And you are making the Attorney General both the prosecutor and the court, as it were, in that case.

The CHAIRMAN. No; that is where we depart, that is where we disagree. He initiates the hearing, but the SACB makes the determination. He merely maintains a register of its findings. I wish we could understand each other, because I don't think we are far apart at all.

Mr. WATSON. Mr. Chairman——

Mr. TUCK. As I understand the gentleman's testimony, he agrees with the bill, but he thinks that the bill should be divided. The part——

The CHAIRMAN. Should stop at registration.

Mr. TUCK. That is right.

The CHAIRMAN. And that is what it does.

Mr. MORRIS. Not stop with registration, sir, stop with the finding.

The CHAIRMAN. That is what the bill does. There is nothing that can be done, except that the Attorney General is to make notation of

it. I see no objection to that. That is certainly important in informing the public.

Mr. MORRIS. Well, to that extent, Mr. Chairman, I agree with you.

I think as again I say, it should be as simple as possible; put the emphasis on finding rather than registration, have the promulgation of the findings, and then let the rest of the thing go.

Now you go further; you eliminate some of the sanctions or almost all of the sanctions. With that, I am not taking issue. I mean, I say, fine, it is in the spirit of what I am saying; let us get on with it, and let us not put something in there about some kind of a prosecution that is going to last 10 years on some points, and that is going to be futile.

We may lose the country in the meantime.

Mr. WATSON. Mr. Chairman, I might say, I think we are close together here. I understand that you are for the bill, at least the thrust of it, in simplifying and making constitutional the disclosure process, that is, so far as registering of Communists.

Mr. MORRIS. Right.

Mr. WATSON. But you differ because you are apprehensive about the change in the definition of Communists, organization or front, in that it might open up extensive litigation.

The CHAIRMAN. Oh, I understand that point, and that is a good one.

Mr. WATSON. That is really about the only difference we have.

The CHAIRMAN. I think that is the only difference.

Mr. MORRIS. And possibly the Attorney General. I mean, I don't think—I think it would clutter up the significance of this thing by having the Attorney General make the list. Why not have the Board make the list of its findings?

The CHAIRMAN. Well, we can amend the bill and put "The Board shall keep a register."

Mr. MORRIS. For simplification, because you can make the point that——

The CHAIRMAN. I have no objection to that. What I want is a register to be kept, because that is what Congress intended in 1950. I say that because I was a party to the passage of that act in 1950.

Mr. MORRIS. Well, as Congressman Watson says, I think we are almost in agreement here.

The CHAIRMAN. I think so.

Mr. MORRIS. My point would be to just simplify it as much as you can, because time is wasting.

The CHAIRMAN. Well, I don't know. Perhaps—I tell you what you do. Suppose you talk to our counsel, and maybe you could come out with an amendment that would have—what difference, for goodness sakes, what difference does it make to me whether it is the Board or the Attorney General who keeps a register?

And if what you have in mind is that you don't interpose the Attorney General, and have the Board make the list, that would be all right with me.

Talk to him, and perhaps you might offer an amendment, and he would certainly consider.

Mr. MORRIS. I appreciate that.

The CHAIRMAN. Talk to the general counsel, would you?

Mr. MORRIS. Very good. I will just read the last two sentences here, just to complete the statement.

As you propose the request to register should be deleted, the SACB should be empowered to issue orders and activate the sanctions by its findings which should be made public.

Events of recent years vindicate the wisdom of the framers of the act. The removal of effective sanctions and the restrictions on responsible exposure of Communist activity, by the courts, have led to a weakening of national morale at home and the extension of Soviet power in the world.

Congress must act now to remove the courts' inhibitions or else the whole act, though constitutionally vindicated will be annulled. If it does not act, and act simply, 17 frustrating years of effort will be lost.

The CHAIRMAN. That is right. I understand.

I appreciate it.

Talk to counsel, will you?

Mr. MORRIS. I will, sir.

The CHAIRMAN. All right.

Mr. MORRIS. Thank you, gentlemen.

Mr. TUCK. Thank you very much.

The CHAIRMAN. Our next witness will be Mr. John Mahan, Chairman, Subversive Activities Control Board.

Mr. Mahan, please come forward, sir.

STATEMENT OF JOHN W. MAHAN, CHAIRMAN, SUBVERSIVE ACTIVITIES CONTROL BOARD, ACCOMPANIED BY CHARLES DIRLAM, COUNSEL

The CHAIRMAN. And do you have a prepared statement?

Mr. MAHAN. Yes, I do, Mr. Chairman.

The CHAIRMAN. I don't suppose it is very long?

Mr. MAHAN. No, sir. I have one prepared statement that I would like to submit to the record, and then give highlights of it.

The CHAIRMAN. That will be fine.

(The statement follows:)

STATEMENT OF THE SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was created 17 years ago by the Congress of the United States specifically for the purpose of disclosing to the American people, Communist-action, Communist-front, and Communist-infiltrated organizations, and the members of Communist-action organizations. Such groups and individuals, according to the Congressional findings, constitute a real and continuing danger to the national welfare.

BACKGROUND

Rarely has there been a more intense study of methods of dealing with a particular evil than that which preceded and produced the Subversive Activities Control Act of 1950. The Act was the final distillate of investigations begun in the 1930's, and which was enacted after more than two years of Congressional work on a number of different bills. The Act was amended in 1954 to enlarge its coverage.

The Subversive Activities Control Board, as established by the 1950 Act, is the *only* agency in the Executive Branch in which is vested the authority to spot-

light and expose Communist activities in the United States. Congress in establishing the Board guaranteed full and fair hearings to accused groups or individuals. The Board is a quasi-court to hear and decide cases brought before it by the Attorney General of the United States. The Board does not itself conduct investigations nor initiate proceedings. Board hearings are subject to the requirements of the Administrative Procedure Act. The law requires that the hearings be open to the public and that an accurate stenographic record be kept. Written findings of fact must be made by the Board in each case it hears. Orders of the Board are subject to judicial review and cannot become effective unless upheld by the courts, if appeals are taken.

During the past 17 years the Board has performed a good function for the Nation. Accomplishments of the Board are set forth below. The basic scheme of disclosure as provided in the Act was upheld by the Supreme Court in 1961. The device of disclosure was again held valid by a Federal Court of Appeals in March 1967, just five months ago, although the court pointed to the need to change some of the provisions. The courts in a series of cases, however, have determined one of the provisions of the Act to be unconsitutional and have interpreted another provision in a way which limits its application. A consequence, of course, has been to decrease the work of the Board.

Pending legislation will remove the limitations and cure the constitutional defect. The other extreme is a move to abolish the Board.

It is absolutely crucial that the Nation take every reasonable and lawful means to protect itself against Communist subversion. Whatever is done with respect to the S.A.C.B. should be done with care and deliberation. The issues are very important—too important for being decided hastily or on impulse.

The Chairman and members of the Subversive Activities Control Board are fully in accord with proposals that the Congress debate and consider all aspects. Should Congress decide that the people have *no* right to know and be warned of Communist activities, or that there is no Communist threat to the Nation, or that there is a threat but different means should be followed to meet and counteract it; then the Board should be abolished. Otherwise, the Act should be amended so as to accord with the court decisions and, perhaps, to again broaden the coverage and scope.

Cases which have been handled by the Board are listed in the attached Table A. An average of just about $300,000 per year has been spent by the Board in the past 17 years. This amounts to $5,000,000 in round numbers. Over $849,000 of unused appropriations have been returned by the Board to the U.S. Treasury.

ACCOMPLISHMENTS OF THE BOARD

No one knows the full effect the Subversive Activities Control Act has had in controlling Communist efforts to subvert our government. No one knows what the situation would be today but for the enactment of that statute. Some things, however, are known and other things reasonably can be assumed.

We do know that many organizations ceased their Communist-directed activities and dissolved when threatened with disclosure by the Board. Part of the statutory concept of a Communist front is that it conceals the facts as to its true character and purpose. Many people would not render support to such an organization once the true facts are known. The Court of Appeals has stated in a formal opinion that when a Communist-front group dissolves, "the purposes of the Act, and more, are accomplished." Dissolved organizations where there are no "final" orders of the Board are shown separately on Table A. As indicated in the Table, some of the organizations as to which there are in effect "final" orders have also become defunct.

We know that the Board has made a very large number of findings of fact which, when upheld on judicial review, place the spotlight on the myriad ways in which the Communist conspiracy operates. This has tremendous value in informing the public. The rulings, findings, and orders of the Board up to June 30, 1966, are contained in four printed volumes having a total of just under 3,000 pages. As stated, Board hearings are open to the public and may be held at any place within the United States. Each party has the full right to cross-examine the witnesses of his adversary. These hearings afford the opportunity for the public to see democracy in action and to learn at the same time. The great quantity of evidence presented at Board hearings is indicated from Table C.

We see from a mere inspection of Table A the types of organizations to which the Act applies and the various activities covered. The Communist activities included in the Board's findings in these cases cover many and varied fields.

such as: sit-ins, rallies, marches, and other protests against the foreign and domestic policies of our government; Communist educational programs to indoctrinate our youth in Marxism-Leninism; Communist efforts to infiltrate legitimate civil rights organizations and other groups to covertly guide them to following the Communist line. Disclosure of such activities has obvious value since a well-informed public is a well-armed public.

From judicial review of Board orders we have learned much as to the procedural and constitutional limitations within which laws to protect the national welfare must operate. We now know much more of how best to balance freedoms and security. There have been 30 or more court decisions (some unreported) in which Board orders and provisions of the Act were considered. In one of these, Chief Judge Bazelon of the Court of Appeals stressed "the strong public interest in the Act's enforcement." A decision of the Court of Appeals in March of the present year in effect suggested the desirability of amending the Act. The Court said in part, ". . . *there is very much indeed that Congress may do in the single purpose to regulate the Communist Party by the device of disclosure.*" Senior Circuit Judge E. Barrett Prettyman, who wrote a separate concurring opinion said, "I agree that the disclosure provisions of this statute are valid in and of themselves. . . ."

Very importantly, the orders of the Board when they become "final," following judicial review where sought, cover or apply to a great number of persons. This is not apparent from the face of the orders. For instance, one case in which an organization is determined to be a Communist front brings within the restrictions of the Act all members who choose to remain such after the Board's order has become final. The Communist Party is said to have between 10,000 and 12,000 members. According to the Director of the Federal Bureau of Investigation there are at least 100,000 "state of mind" members who are sympathetic to the Party line and objectives. It is reasonable to assume that all or most of most of them are active in Communist fronts.

PRESENT ACTIVITIES

There is presently pending in the Board a case on petition of the Attorney General for hearings and determination whether an organization named the W.E.B. DuBois Clubs of America is a Communist-front organization as defined in the statute. Shortly after the Attorney General's petition was filed the DuBois Clubs and others began litigation in the District Court seeking to enjoin Board proceedings under the "Communist-front" provisions of the Act, and for declaratory judgment that such provisions are unconstitutional.

The petition of the Attorney General in this case was filed in the Board in March 1966. Thereafter various motions of the parties were heard and ruled upon by the Board until May 31, 1966, when it became necessary to suspend further proceedings because of the court litigation. On May 5, 1967, after almost a full year, the court dismissed the suit by the DuBois Clubs. The Board called the parties before it for a prehearing conference on May 25, 1967, and subsequently fixed June 20, 1967, as the date to begin hearing evidence. On June 12, 1967, the court directed the Board to postpone all further proceedings in the Board until the Supreme Court disposes of the DuBois Clubs' appeal from the refusal of the lower court to enjoin the hearing in the Board and to declare the Act unconstitutional.

During the period from January 20, 1966, to June 14, 1967, there have been 45 formal meetings of the Board (official minutes recording actions taken) and at least that many informal meetings (no minutes kept). Actions with respect to the proceedings in the Board and in the courts involving the DuBois Clubs were among the matters considered at 25 of the 45 formal meetings, and many of the informal meetings.

Parenthetically, other actions taken by the Board during this period included, among others: orders issued with respect to the Veterans of the Abraham Lincoln Brigade and the International Union of Mine, Mill and Smelter Workers; reports adopted giving the Board's views, as requested by Congressional Committees, on H.R. 5942, H.R. 6134, S. 518, H.R. 12302, H.R. 10390 and H.R. 10391, and other proposed legislation; formulated and issued rules and regulations in compliance with the Public Information Act.

Considerable effort has been devoted by the Board in working with its attorneys with respect to possible changes in the present statute. The members have

studied a great many court opinions that bear either directly or indirectly upon the Act's provisions. Recommendations of the attorneys have been discussed and drafts arrived at so that specific suggestions can be made as to legislation.

THE FUTURE

The following quotations from statements made by the Director of the Federal Bureau of Investigation clearly and forcefully show that the Communist threat to the Nation not only continues but has become intensified. These statements are informed and reliable. They indicate strongly the necessity that the Subversive Activities Control Act be amended so as to disclose and regulate, in the national interest, those organizations and individuals that are carrying out the Communist activities:

"In its struggle to become a more potent force on the American scene, the Communist Party, USA, greatly stepped up its activities during the past twelve months." (January 5, 1967.)

". . . Gus Hall, General Secretary of the Communist Party, USA, stated that the Party was experiencing the greatest upsurge in its history. Hall said that the Party membership had jumped 1,000 or 2,000 above its 10,000 total of a year ago." (January 6, 1966.)

"The Party is today, in every way possible, attempting to camouflage its true communist identity. . . . The Party is intensifying its campaign to infiltrate and subvert the institutions of our society. . . . In the civil rights field, the Party is becoming bolder. . . . The Party is eagerly trying to reach the hearts, minds and souls of our young people." (March 27, 1967.)

"The Communist Party is riding the crest of a wave of optimism . . . . in Communist eyes, recent Supreme Court decisions invalidating portions of the Internal Security Act of 1950 have given the Party the green light to become more active in mass agitation. . . . The Party, moreover, senses a new mood of radicalism in America. . . ." (1966.)

"The Communist Party, U.S.A., undoubtedly is in a much stronger position as a result of the 18th National Convention. [Held in June 1966.] Completely loyal to a foreign power, the Soviet Union, it remains a serious threat to our national security."

Findings of the Board have disclosed many of the strategies and tactics followed by the Party in its efforts to accomplish the goals outlined by F.B.I. Director Hoover. The Party's efforts to ensnare young Americans may be used to demonstrate both the past, present, and future of the Board's activities.

The Board in its first case found that the Communist Party, pursuant to foreign directives, established in this country a Young Communist League affiliated with the Young Communist International (see 1 SACB 236.) The Y.C.L. was dissolved in 1943 when the International had become widely known as a part of the world Communist conspiracy. The Communist Party next organized the "American Youth for Democracy" as a technically non-Communist organization designated to recruit and influence as many young people as possible for the Party. (See 1 SACB 237.)

Next came the Labor Youth League. The Board has determined that this group was created as a purportedly independent organization devoted to the so-called needs of the youth but which was in fact completely subservient to the Party and used as a means whereby a segment of American youth was indoctrinated and trained for dedicated membership and future positions of leadership in the Party. (See 1 SACB 378.) The Labor Youth League dissolved after having been ordered by the Board to register as a Communist-front organization. The case is subject to further Board consideration if the purported dissolution is shown to have been a sham.

The demise of the Labor Youth League was followed by a Board hearing on petition of the Attorney General with respect to a youth organization named "Advance and Burning Issues Youth Organizations." That organization disbanded after a Board hearing officer recommended that it be ordered to register as a Communist front. The Board is holding the case in abeyance in the event the organization resumes activities.

There is now pending in the Board for hearings, as soon as the court-imposed stay is lifted, a petition of the Attorney General charging that the W.E.B. DuBois Clubs of America is a front for the Communist Party which seeks, among other things, to indoctrinate American youth in Marxism-Leninism and recruit them into the Party.

Two other cases are also being held by the Board in the status of indefinite abeyance. They, too, involve groups which ceased activities and dissolved when threatened with disclosure by the Board. The Board is holding the cases subject to an order to reopen them should it develop that the purported dissolutions were a sham to avoid disclosure, or if the groups again undertake their Communist activities.

Enactment of remedial legislation will greatly add to the workload of the Board. It can be argued that legislation should not be considered until the Supreme Court has disposed of the case now before it as respects proceedings under the Communist-front provisions. However, the actions open to the court cover many possibilities and it is doubtful that the decision will provide additional guidelines for legislation. Moreover, pending legislation has as a primary purpose making it possible to disclose and restrict individual hard-core Communists. This is not involved in the matter now before the Court. The Supreme Court has already spoken in this respect.

CONCLUSION

The Nation is at the cross-roads as to disclosing and regulating the Communist conspiracy in this country. At issue is whether the Subversive Activities Control Board be required to close up shop and, in effect, let the Communists win a 17 year battle by default.

The Congress must decide what the American people need and want. Congress must determine whether to keep the Board alive and give it the tools necessary fully to disclose and regulate the operations of the Communist conspiracy in this country. This involves the question whether $5,000,000 and 17 years of effort in disclosing the Communist conspiracy and in developing ways of doing so within the framework of the Constitution of the United States are to be thrown away in order to "save" another $295,000.

Calm and studied deliberation is necessary. Press reports that the Board is doing nothing and serves no purpose should be examined in the light of the facts. The matter is too vital to warrant gambling with the national security.

JULY 28, 1967.

TABLE A

SUBVERSIVE ACTIVITIES CONTROL BOARD

CASES BROUGHT BEFORE THE BOARD

(As of June 30, 1967)

A. *Registration Orders Are Final:*
- Communist Party of the United States of America
- California Emergency Defense Committee
- California Labor School, Inc.
- Civil Rights Congress
- Connecticut Volunteers for Civil Rights
- Jefferson School of Social Science
- United May Day Committee
- Washington Pension Union

B. *Cases Being Held in Abeyance (Organizations not Active):*
- American Peace Crusade
- Colorado Committee to Protect Civil Liberties
- Labor Youth League
- Advance and Burning Issues Youth Organizations

C. *Cases Pending:*
- W.E.B. DuBois Clubs of America

D. *Cases Where Organizations Dissolved (Some included in A, above, have ceased activities):*
- American Slav Congress
- Committee for a Democratic Far Eastern Policy
- Committee to End Sedition Laws
- Council on African Affairs, Inc.
- Joint-Anti Fascist Refugee Committee
- National Negro Labor Council
- Save Our Sons Committee

E. *Cases Dismissed Following Judicial Review:*

American Committee for Protection of Foreign Born
International Union of Mine, Mill and Smelter Workers
International Union, Mine, Mill and Smelter Workers (Redetermination)
International Workers Order, Inc.
National Council of American-Soviet Friendship, Inc.
United Electrical, Radio and Machine Workers of America
Veterans of the Abraham Lincoln Brigade
William Albertson
Samuel Krass Davis
Benjamin Dobbs
Mildred McAdory Edelman
Miriam Friedlander
Frances Gabor
Norman Haaland
Flora Hall
Donald Andrew Hamerquist
Dorothy Healey
Otis Archer Hood
Benjamin Gerald Jacobson
Arnold Samuel Johnson
Lewis Martin Johnson
Elmer Charles Kistler
Samuel Kushner
Aaron Libson
Lionel Joseph Libson
Claude Mack Lightfoot
Albert Jason Lima
Hyman Lumer
Marvin Joel Markman
George Aloysius Meyers
Thomas Nabried
Burt Gale Nelson
Ralph Nelson
William L. Patterson
Irving Potash
Roscoe Quincy Proctor
Daniel Lieber Queen
Mortimer Daniel Rubin
Michael Saunders
Betty Mae Smith
John William Stanford, Jr.
Meyer Jacob Stein
Milford Adolf Sutherland
Ralph William Taylor
William Cottle Taylor
Edward S. Teixeira
Anne Burlak Timpson
Betty Gannett Tormey
James Joseph Tormey
Louis Weinstock
William Wolf Weinstone

Mr. MAHAN. If it is all right with the chairman, I would like to introduce Mr. Charles Dirlam, our counsel for the SACB.

The CHAIRMAN. That is fine.

Mr. MAHAN. And I wish to say to you first of all, Mr. Chairman, it has been a pleasure to me since I have been here to meet with your staff, and I think they have done a very conscientious and wonderful job for this committee, and also it is a pleasure to see my friend Dick Roudebush.

I served as his senior vice commander while he was national com-

mander to the Veterans of Foreign Wars, but to go into the business at hand, Mr. Chairman——

Mr. ICHORD. Mr. Chairman, do we have a copy of his statement?

Mr. MAHAN. No, I don't think so.

The CHAIRMAN. Do you have it?

Don't you have about five?

Mr. MAHAN. No, he doesn't, Mr. Chairman.

The CHAIRMAN. All right, proceed.

Mr. MAHAN. I was appointed as Chairman of the Subversive Activities Control Board in December of 1965, and the job since then has not been without its frustrations, as I will outline in a moment.

For the record, may I mention briefly the purposes and procedures of the Board, and I have for your record the Subversive Activities Control Board Step-by-Step Handling of Cases, Mr. Chairman, because many people do not realize the procedure before the Board, and I thought it would be good for your record.

The CHAIRMAN. I think it is a splendid idea to have in the record at this point. It will be admitted at this point.

(The information follows:)

SUBVERSIVE ACTIVITIES CONTROL BOARD

STEP-BY-STEP HANDLING OF CASES

1. The parties to proceedings before the Board are, in most instances, the Attorney General of the United States, designated as "petitioner," and an organization or individual, designated as "respondent."
2. The Attorney General files his petition with clerk of Board. Clerk enters in docket and sends respondent a copy of the Board's rules of procedure.
3. Full Board meets and considers, and hears oral argument where indicated, with respect to any preliminary motions filed by the parties, such as a motion by respondent to dismiss, or for particulars. (Board's rules fix time within which preliminary motions may be filed.)
4. Respondent files an answer to the Attorney General's petition. In some cases the Board holds a prehearing conference with attorneys for the parties prior to fixing the time and place of hearings for the purpose of taking evidence. Absent a prehearing conference, or following it if one is held, the Board meets and issues an order fixing the time and place for hearings and designating the hearing officer.
5. Evidentiary hearings are conducted either by the full Board, one or more members of the Board sitting as hearing officers, or by a hearing examiner designated by the Board. (The Board does not now have any hearing examiners.)
6. Following hearings, the parties are given the opportunity to file proposed findings of fact and briefs on legal questions. Where hearings are not conducted by the full Board, the hearing officer prepares and issues a recommended decision.
7. Both sides are given the opportunity to file exceptions to the recommended decision and to be heard thereon by the full Board.
8. Board issues written findings of fact and an appropriate order. There is a statutory right of the aggrieved party to judicial review. Board is a party to litigation on judicial review.
9. Where full Board conducts the evidentiary hearings there is no recommended decision. The Board issues its decision based upon the evidence and proposed findings and briefs submitted by the parties.

The CHAIRMAN. Tell me, I have been receiving every year an analysis by the Board and the Attorney General of proceedings conducted.

How many adversary proceedings against individuals and organizations have there been?

Mr. MAHAN. There have been 70 cases.

The CHAIRMAN. How many?

Mr. MAHAN. Seventy cases.

The CHAIRMAN. Seventy?

Mr. MAHAN. And I have for the record a list of all the Communist-action, Communist-front cases, individual cases for your record. How long each took. For instance, the Communist Party, U.S.A., case mentioned by the previous witness started in 1950, finally finished in 1961. It involved 16,824 pages of transcript, with 745 exhibits.

And I have this for the record, so that your committee will have it and will know exactly every case that has been instituted, and what has happened to every case that has been tried.

The CHAIRMAN. That is fine.

(The record follows:)

DOCKET NO	NAME OF RESPONDENT	PETITION FILED	LOCATION OF HEARING	HEARD BY	RECORD PAGES	NO OF EXHIBITS	COMPLETED BY BOARD	DISPOSITION	FINAL COURT ACTION	DISPOSITION
51-53	COMMUNIST PARTY OF THE UNITED STATES OF AMERICA	11-20-50	WASHINGTON, D.C. NEW YORK, N.Y	PANEL	16,824	76	4-20-53	ORDER OF REGISTRATION	4-20-56	REVERSED AND REMANDED
51-53	COMMUNIST PARTY OF THE UNITED STATES OF AMERICA (1ST REMAND)		WASHINGTON, D.C.	BOARD	745	—	12-18-56	REGISTRATION ORDER OF 4-20-53 REAFFIRMED	1-9-58	REMAND
51-53	COMMUNIST PARTY OF THE UNITED STATES OF AMERICA (2ND REMAND)		WASHINGTON, D.C.	MEMBER	976	—	2-19-59	REGISTRATION ORDER OF 4-20-53 REAFFIRMED	6-8-61	REGISTRATION ORDER AFFIRMED
102-53	LABOR YOUTH LEAGUE	4-22-53	WASHINGTON, D.C NEW YORK, N.Y.	MEMBER	5,583	187	2-25-55	ORDER OF REGISTRATION	1-8-62	REMAND
102-53	LABOR YOUTH LEAGUE (REMAND)		WASHINGTON, D.C.	BOARD	105	2	2-2-62	DETERMINATION THAT THERE WAS NO SUCH A PERMANENT DISSOLUTION SO AS TO AFFECT ORDER OF REGISTRATION	4-25-63	REMAND TO PLACE CASE IN AN INDEFINITELY INACTIVE STATUS
103-53	INTERNATIONAL WORKERS ORDER, INC.	4-22-53	WASHINGTON, D.C.	BOARD	348	—	1-14-54	ORDER OF REGISTRATION	11-19-54	PETITION OF ATTORNEY GENERAL ORDERED DISMISSED
104-53	NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC.	4-22-53	WASHINGTON, D.C	MEMBER	6,965	300	2-9-56	ORDER OF REGISTRATION	5-16-63	REGISTRATION ORDER VACATED AND PETITION DISMISSED
105-53	JOINT ANTI-FASCIST REFUGEE COMMITTEE	4-22-53	WASHINGTON, D.C.	BOARD	270	—	6-1-55	ORDER GRANTING MOTION TO DISMISS PETITION WITHOUT PREJUDICE		
106-53	CIVIL RIGHTS CONGRESS	4-22-53	WASHINGTON, D.C.	MEMBER	7,311	372	7-21-57	ORDER OF REGISTRATION	1-8-62	REMAND
106-53	CIVIL RIGHTS CONGRESS (REMAND)		NEW YORK, N.Y NEW YORK, N.Y	BOARD	39		7-11-62	DETERMINATION THAT CRC HAD NOT DISSOLVED—ORDER OF REGISTRATION UNAFFECTED	5-23-63	MOTION TO VACATE ORDER OF REGISTRATION DENIED ORDER BECAME FINAL FOR FAILURE TO PURSUE APPEAL
107-53	JEFFERSON SCHOOL OF SOCIAL SCIENCE	4-22-53	WASHINGTON, D.C	MEMBER	4,555	267	6-30-55	ORDER OF REGISTRATION	1-8-62	REMAND
107-53	JEFFERSON SCHOOL OF SOCIAL SCIENCE (REMAND)		NEW YORK, N.Y NEW YORK, N.Y.	BOARD	128	41	2-2-62	DETERMINATION THAT SCHOOL HAD NOT DISSOLVED—ORDER OF REGISTRATION UNAFFECTED	12-17-63	REGISTRATION ORDER AFFIRMED
108-53	VETERANS OF THE ABRAHAM LINCOLN BRIGADE	4-22-53	WASHINGTON, D.C. NEW YORK, N.Y.	MEMBERS	5,557	320	12-21-55	ORDER OF REGISTRATION	4-26-65	REMAND
108-53	VETERANS OF THE ABRAHAM LINCOLN BRIGADE (REMAND)						4-20-66	REGISTRATION ORDER VACATED AND PETITION DISMISSED ON JOINT MOTION OF PARTIES		
109-53	AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN	4-22-53	WASHINGTON, D.C.	EXAMINER	8,447	567	6-27-60	ORDER OF REGISTRATION	1-8-62	REMAND
109-53	AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN (1ST REMAND)		WASHINGTON, D.C.	BOARD	32	4	3-8-62	REDESIGNATION THAT ORDER OF REGISTRATION BE AFFIRMED	4-26-65	REMAND
109-53	AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN (2ND REMAND)						4-1-66	REGISTRATION ORDER VACATED AND PETITION DISMISSED ON JOINT MOTION OF PARTIES		
112-53	COUNCIL ON AFRICAN AFFAIRS, INC	4-22-53					9-15-55	ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE		

DOCKET NO.	NAME OF RESPONDENT	PETITION FILED	PLACE OF HEARING	HEARD BY	RECORD PAGES	NO. OF EXHIBITS	COMPLETED BY BOARD	DISPOSITION	FINAL COURT ACTION	DISPOSITION
111-53	UNITED MAY DAY COMMITTEE	4-22-53	WASHINGTON, D.C.	MEMBER	2036	426	4-27-56	ORDER OF REGISTRATION	12-17-63	REGISTRATION ORDER AFFIRMED
112-53	AMERICAN SLAV CONGRESS	4-22-53	WASHINGTON, D.C.	EXAMINER	88	7	4-14-55	ORDER DISMISSING PETITION ON GROUND THAT JURISDICTION WAS NOT OBTAINED OVER RESPONDENT		
113-53	COMMITTEE FOR A DEMOCRATIC FAR EASTERN POLICY	4-22-53	WASHINGTON, D.C.	EXAMINER	116	5	5-9-55	ORDER DISMISSING PETITION ON GROUND THAT JURISDICTION WAS NOT OBTAINED OVER RESPONDENT		
114-55	WASHINGTON PENSION UNION	12-29-54	SEATTLE, WASH.	MEMBER	5912	201	4-14-59	ORDER OF REGISTRATION	1-8-62	REMAND
114-55	WASHINGTON PENSION UNION (REMAND)		SEATTLE, WASH	BOARD	143	8	6-20-62	DETERMINATION THAT RESPONDENT HAD NOT DISSOLVED - REGISTRATION ORDER UNAFFECTED	6-6-63	PETITION FOR REVIEW DISMISSED FOR LACK OF PARTY-PETITIONER. REGISTRATION ORDER BECAME FINAL UNDER STATUTORY PROVISIONS.
115-55	CALIFORNIA LABOR SCHOOL, INC.	3-31-55	WASHINGTON, D.C.	MEMBER	3095	281	5-21-57	ORDER OF REGISTRATION	3-2-62	REMAND
115-55	CALIFORNIA LABOR SCHOOL, INC. (REMAND)		SAN FRANCISCO, CAL. SAN FRANCISCO, CAL	BOARD	79	—	6-20-62	DETERMINATION THAT RESPONDENT HAD NOT DISSOLVED - REGISTRATION ORDER UNAFFECTED		MOTION TO VACATE REGISTRATION ORDER AND DISMISS PETITION DENIED. RESPONDENT ABANDONED APPEAL AND REGISTRATION ORDER BECAME FINAL.
116-56	INTERNATIONAL UNION OF MINE-MILL AND SMELTER WORKERS	7-28-55	WASHINGTON, D.C.	MEMBER	10,354	385	5-4-62	DETERMINATION THAT RESPONDENT IS A COMMUNIST-INFILTRATED ORGANIZATION	11-1-65	REMAND
116-56	INTERNATIONAL UNION OF MINE-MILL AND SMELTER WORKERS (REMAND)						6-16-66	ORDER DETERMINING UNION TO BE COMMUNIST-INFILTRATED VACATED AND PETITION DISMISSED ON JOINT MOTION OF THE PARTIES		
117-56	AMERICAN PEACE CRUSADE	8-1-55	WASHINGTON, D.C.	MEMBER	1,235	199	7-26-57	ORDER OF REGISTRATION	1-8-62	REMAND
117-56	AMERICAN PEACE CRUSADE (REMAND)		WASHINGTON, D.C.	BOARD	72	—	7-6-62	DETERMINATION THAT THERE HAS BEEN NO CHANGE IN RESPONDENT SO AS TO AFFECT ORDER	6-6-63	REMANDED TO PLACE CASE IN STATUS OF INDEFINITE ABEYANCE
118-56	NATIONAL NEGRO LABOR COUNCIL	9-28-55					9-23-57	OF REGISTRATION ORDER GRANTING MOTION OF ATTORNEY GENERAL TO DISMISS PETITION WITHOUT PREJUDICE		

DOCKET NO.	NAME OF RESPONDENT	PETITION FILED	LOCATION OF HEARING	HEARD BY	REC'D PAGES	EX. OF EXHIBITS	COMPLETED BY BOARD	DISPOSITION	FINAL ORDER ENTERED	DISPOSITION
119-56	UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA	12-20-55	NEW YORK, N.Y.	MEMBER	1,107	10	3-30-59	ORDER GRANTING MOTION OF ATTORNEY GENERAL TO DISMISS PETITION		
120-57	COLORADO COMMITTEE TO PROTECT CIVIL LIBERTIES	8-9-56	DENVER, COLO. WASHINGTON, D.C.	MEMBER BOARD	505 166	19 —	4-15-59 7-2-64	ORDER OF REGISTRATION RECOMMENDATION THAT	1-8-62 6-6-63	REMAND REMAND TO PLACE CASE IN
120-57	COLORADO COMMITTEE TO PROTECT CIVIL LIBERTIES (REMAND)							COURT FIX A TIME WITHIN WHICH EVIDENCE AS TO DISSOLUTION BE TAKEN OR DULY NOTICE TO DISMISS AND VACATE ORDER		STATUS OF INDEFINITE ABEYANCE
121-57	CONNECTICUT VOLUNTEERS FOR CIVIL RIGHTS	8-15-56	HARTFORD, CONN.	MEMBER	255	78	7-14-59	ORDER OF REGISTRATION ORDER BECAME FINAL WHEN RESPONDENT FAILED TO APPEAL		
122-57	SAVE OUR SONS COMMITTEE						9-26-57	ORDER GRANTING MOTION OF ATTORNEY GENERAL TO DISMISS PETITION		
123-57	SAN FERNANDO EMERGENCY DEFENSE COMMITTEE	12-1-56	LOS ANGELES, CAL. SAN FRANCISCO, CAL.	MEMBER	574	152	4-14-59	ORDER OF REGISTRATION ORDER BECAME FINAL WHEN RESPONDENT FAILED TO APPEAL		
124-57	COMMITTEE TO END SEDITION LAWS	12-1-56	PITTSBURGH, PA	MEMBER	943	45	9-17-57	ORDER GRANTING MOTION OF ATTORNEY GENERAL TO DISMISS PETITION WITHOUT PREJUDICE.		
125-62	ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES (MINE-MILL REDETERMINATION CASE)	5-31-62	WASHINGTON, D.C. SAN FRANCISCO, CAL.	MEMBER	2,405	98	12-20-63	ORDER DISMISSING REDETERMINATION PETITION	11-1-65	REMAND
125-62	ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES (REDETERMINATION REMAND)						6-16-66	ORDER VACATING ORDER OF 12-20-63 AND DISMISSING PROCEEDING AS MOOT		
126-63	ADVANCE AND BUFFALO ISSUES WITH ORGANIZATION	1-10-63	NEW YORK, N.Y.	EXAMINER	2,552	36	9-16-65	ORDER PLACING CASE IN STATUS OF INDEFINITE ABEYANCE ON MOTION OF INTERVENOR CONSENTED TO BY ATTORNEY GENERAL		
127-66	W.E.B. DUBOIS CLUBS OF AMERICA	3-14-66								

INDIVIDUAL PROCEEDINGS BEFORE THE S.A.C.B.

DOCKET NO.	NAME OF RESPONDENT	PETITION FILED	LOCATION OF HEARING	HEARD BY	RECORD PAGES	NO. OF EXHIBITS	COMPLETED BY BOARD	DISPOSITION	FINAL CERTIFICATION	DISPOSITION	
I-1-62	WILLIAM ALBERTSON	5-31-62	WASHINGTON D C	BOARD	390	4	10-29-62	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-2-62	MIRIAM FRIEDLANDER	5-31-62	WASHINGTON D C	BOARD	407	4	11-2-62	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-3-62	ARNOLD SAMUEL JOHNSON	5-31-62	NEW YORK, N Y	MEMBER	375	4	11-27-62	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-4-62	WILLIAM L PATTERSON	5-31-62	NEW YORK, N.Y	EXAMINER	424	3	12-15-62	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-5-62	BETTY GARRETT TORMEY	5-31-62	NEW YORK, N Y	MEMBER	541	4	12-19-62	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-6-62	LOUIS WEINSTOCK	5-31-62	NEW YORK, N Y	MEMBER	523	4	1-16-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-7-62	DOROTHY HEALEY	5-31-62	LOS ANGELES, CAL	BOARD	198	5	12-18-62	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-8-62	ALBERT JASON LIMA	5-31-62	SAN FRANCISCO, CAL.	MEMBER	263	6	1-17-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-9-62	GUNTHALE NELSON	5-31-62	SEATTLE, WASH.	MEMBER	241	2	1-21-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-10-62	ROSCOE CHESTER PROCTOR	5-31-62	SAN FRANCISCO, CAL.	MEMBER	206	2	1-15-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-11-63	SAMUEL KRASS DAVIS	12-6-62	WASHINGTON, D C	BOARD	206	7	3-5-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-12-63	CLARDE MALK LIGHTFOOT	12-6-62	CHICAGO, ILL.	BOARD	299	4	3-5-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-13-63	FLORA HALL	12-6-62	WASHINGTON, DC	EXAMINER	226	2	4-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-14-63	SAMUEL KUSHNER	12-6-62	WASHINGTON, D C	EXAMINER	225	2	4-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-15-63	GECKLE ALCYSIUS MEYERS	4-11-63	BALTIMORE, MD.	EXAMINER	213	1	12-4-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-16-63	THOMAS MARIED	4-11-63	PHILADELPHIA, PA.	EXAMINER	251	0	12-4-63	ORDER OF REGISTRATION	5-12-65	REGISTRATION ORDER	VACATED
I-17-63	MILDRED MURPHY EDELMAN	4-4-63	NEW YORK, N.Y.	MEMBER	819	3	12-4-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-18-63	ISIDOR PETASH	4-11-63	NEW YORK, N.Y.	MEMBER	399	3	12-4-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-19-63	WILLIAM WOLF WEINSTONE	4-11-63	NEW YORK, N Y	MEMBER	373	3	12-4-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-20-63	MORTIMER DANIEL RUBIN	4-11-63	NEW YORK, N.Y.	MEMBER	235	0	12-4-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-21-63	JUNE WILLIAM STANFORD JR.	6-13-63	WASHINGTON, D.C.	MEMBER	174	2	12-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-22-63	BENJAMIN DOBBS	6-13-63	WASHINGTON, D C	MEMBER	140	0	12-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-23-63	WILLIAM LOTTLE TAYLOR	6-13-63	WASHINGTON, D.C.	MEMBER	200	0	12-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-24-63	FRANCES CRAIG	6-13-63	PHILADELPHIA, PA	MEMBER	298	0	12-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-25-63	ABRAM LIBSON	6-13-63	PHILADELPHIA, PA.	MEMBER	283	0	12-26-63	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-26-63	LICKEL JOSEPH LIBSON	6-13-63	NEW YORK, N.Y.	EXAMINER	203	1	5-21-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-27-63	JAMES JOSEPH TORMEY	6-13-63	NEW YORK, N.Y.	EXAMINER	262	1	9-29-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-28-64	MEMPEL SAUNDERS	11-19-63	CHICAGO, ILL.	EXAMINER	179	0	11-13-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-29-64	DANIEL UEBER QUEEN	11-19-63	CHICAGO, ILL.	EXAMINER	244	0	11-13-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-30-64	RALPH WILLIAM TAYLOR	11-19-63	ST. PAUL, MINN.	BOARD	113	3	5-1-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-31-64	BETTY MAE SMITH	11-19-63	ST. PAUL, MINN	BOARD	113	2	5-1-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-32-64	MARVIN JOEL MARKMAN	11-15-63	NEW YORK, N.Y.	EXAMINER	622	6	1-13-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-33-64	MEYER JACOB STEIN	11-19-63	NEW YORK, N.Y.	EXAMINER	620	6	1-13-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-34-64	NORMAN HAARLAND	11-19-63	PORTLAND, ORE	BOARD	444	6	7-23-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-35-64	BENJAMIN GERALD JALLGSEN	11-19-63	PORTLAND, ORE.	BOARD	440	6	7-23-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-36-64	MILFORD ADOLF SUTHERLAND	11-19-63	TACOMA, WASH.	BOARD	558	5	7-22-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-37-64	DONALD ANDREW HAMERQUIST	11-19-63	TACOMA, WASH.	BOARD	559	5	7-22-64	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-38-65	HYMAN LUMER	9-30-64	NEW YORK, N.Y.	EXAMINER	252	3	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-39-65	ELMER CHARLES KISTLER	9-30-64	SEATTLE, WASH	EXAMINER	222	0	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-40-65	RALPH NELSON	9-30-64	PORTLAND, ORE	MEMBER	452	0	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-41-65	OTIS ARCHER HOLD	9-30-64	BOSTON, MASS.	EXAMINER	420	0	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-42-65	LEWIS MARTIN JOHNSON	9-30-64	BOSTON, MASS	EXAMINER	418	0	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-43-65	EDWARD S. TEIXEIRA	9-30-64	BOSTON, MASS.	EXAMINER	410	0	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED
I-44-65	MAUD GURLAK TIMPSON	9-30-64	BOSTON, MASS	EXAMINER	418	0	7-30-65	ORDER OF REGISTRATION	11-15-65	REGISTRATION ORDER	VACATED

Mr. ICHORD. Seventy cases since when?

The CHAIRMAN. Since the act was on the books, in 1950.

Mr. MAHAN. Since 1950, but these cases involve, as I have mentioned before, many years and many thousands of transcripts, and many thousands of people are involved.

The CHAIRMAN. During what period of time did you serve as Chairman?

Mr. MAHAN. I was appointed on the Board, Mr. Chairman, in October of 1965, and I was made Chairman by the President on December 27.

The CHAIRMAN. 1965?

Mr. MAHAN. 1965. And since I have been on the Board, we have had one case filed with us by the Attorney General, and that is the W.E.B. DuBois Clubs case. We set it for hearings to begin this June the 20th, after the three-judge court of the District of Columbia had ruled unanimously that we had the right to proceed with the case.

Then after they ruled unanimously that we had the right to hear the case, a few days later they filed a stay against us, so we couldn't go ahead with the case until the Supreme Court decided whether to accept the case on jurisdictional grounds.

The CHAIRMAN. They are very resourceful, these respondents, aren't they?

Mr. MAHAN. And, of course, the Supreme Court at that time had gone into recess, so we can't do anything about it until October, when the Court comes back from recess and decides whether to accept the W.E.B. DuBois Clubs case before we have had a hearing in relation to that case.

Mr. ICHORD. May I ask a clarifying question there, Mr. Chairman?

The CHAIRMAN. Surely.

Mr. ICHORD. You mean that the defense counsel has filed with the courts a proceeding asking for an injunction against your hearing the case?

Mr. MAHAN. They did, as soon as the case was filed by the Attorney General. They filed a proceeding in the district court, asking an injunction, stopping us from hearing the case on the basis——

The CHAIRMAN. And that was unanimously dismissed?

Mr. MAHAN. That was unanimously dismissed.

The CHAIRMAN. Then they did what?

Mr. MAHAN. Then the same court filed a stay on us, when the Supreme Court went in recess, until the Supreme Court can decide whether they should accept the case.

The CHAIRMAN. On a rehearing?

Mr. MAHAN. No, not on a rehearing; on the basis that the act in relation to Communist fronts is unconstitutional.

The CHAIRMAN. Having unanimously held one way, how did they change their mind?

Mr. MAHAN. I do not know, Mr. Chairman.

Mr. ICHORD. I suppose, Mr. Chairman, they are raising constitutional questions dealing with procedural due process.

Mr. MAHAN. That is correct.

The CHAIRMAN. Issued a stay to the proceedings.

Mr. MAHAN. That is right.

So then the first thing I think that we have to decide is whether there is a Communist menace in America, and I think that we all agree that there is. We can read the statements of Mr. Hoover, which I have listed in the statement that I have given you, and I am sure you have all read those statements.

We can then decide if there is a danger in America, is this Board, and I am convinced it is, the proper place to expose to the American people the Communist menace?

The CHAIRMAN. Well, yesterday I commented on the fact that some people's nerves were aggravated because the President was proposing to appoint as a member of the Board the husband of his former secretary, on the ground of politics.

And I made a statement on the floor of the House a few days ago giving my own feelings that the Board by all means should be preserved and intending, in short, to tell those people who are saying that, "Now listen to who is talking about politics."

Mr. MAHAN. I agree with you, Mr. Chairman. I feel the Board should be, and I feel that the Board is, the only branch of the Executive Government that has the power today to reveal to the American people the Communists.

Now our duties are not to investigate. Our duties are not to prosecute. Our duties are merely to sit as a quasi-judicial body.

The CHAIRMAN. Exactly.

Mr. MAHAN. And we can't do anything unless the Attorney General files a petition before us. However, if your bill did pass, the parties that have been found to be Communist fronts and found to be members of the Communist Party, they then could come before the Board and ask that their names be removed from the list on rehearing.

I understand that is in the bill.

Mr. ICHORD. Mr. Chairman, may I interpose a question here?

The CHAIRMAN. Yes.

Mr. ICHORD. What is your purpose in proceeding with the DuBois case at the present time, after the Supreme Court decision to the effect that no member of a Communist organization can be compelled to register?

Mr. MAHAN. It is my personal opinion, and the Board's opinion, that the purpose of the act, and the main purpose of what Congress intended in 1950, was to allow the American people to know who the Communists in this country were.

The CHAIRMAN. That is right, and our bill preserves that.

Mr. ICHORD. You would make a finding; you haven't made any finding in regard to the DuBois Club yet.

Mr. MAHAN. No, we haven't.

Mr. ICHORD. But your finding might be, on the basis of the evidence that you hear, that the DuBois Clubs, W.E.B. DuBois Club, is a Communist or a Communist-front organization and, as such, is compelled to register. That would be your finding?

Mr. MAHAON. That might be the finding today, yes. If the law is changed, and you take out the registration, we wouldn't have the problem with the Supreme Court. And we feel that once we have informed the people of the United States that an organization is a Communist-front organization, then the youth of this country who would belong to that organization then have a right to decide not to belong.

The CHAIRMAN. So let me see now.

So if the Congress should act this session, the balance of this year, and the President should sign this bill, that would answer your problem, in effect; wouldn't it?

Mr. MAHAN. I believe so, personally, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. MAHAN. In other words, the Supreme Court's decision was to the effect that to require a member of the Communist Party to register violates a member's fifth amendment privilege against self-incrimination, and there have been no cases filed with the Board to identify and disclose members and officials of the Communist Party since the Albertson case, which was 1965.

Obviously, an amendment to the act is needed to provide for disclosing the members of the Communist conspiracy within the framework of the Constitution.

And the bills being considered by you do that by the simple device of eliminating compulsory registration, after the Board has determined that a particular individual is a member of any Communist-action organization.

The act as now written also provides for compulsory registration by organizations which the Board has determined to be Communist-action or Communist-front. Various restrictions apply to such organizations and those who choose to remain in office, to remain officers or members, when there is in effect a final Board order that the organization register.

The question, whether the Board may issue valid orders requiring organizations to register, has not been squarely decided by the courts up to the present time.

However, in what is perhaps the next closest thing, the court of appeals held in March of this year that criminal sanctions can't lawfully be applied to an organization that fails to register, after having been ordered to do so.

The CHAIRMAN. Well, these court proceedings will still at least be alive throughout this year, so if this bill is enacted, I repeat that would substantially or just about solve your problem.

Mr. MAHAN. The pending bills retain provisions for the Board to issue organization registration orders, but eliminate criminal penalties if an organization does not obey the order.

I believe that the preferable approach is to handle the disclosure and regulation of Communist organizations the same as is done with respect to individuals under your bill.

And I feel that if that was passed and signed by the President this year, it would solve the problems before us.

The CHAIRMAN. And then the belly-aching about the President's new appointment would be moot, also.

Mr. MAHAN. And we would have more work to do.

The CHAIRMAN. And you would have work to do. And by the way, I suggest to you and the Attorney General that you do go to work after this bill becomes law.

Mr. MAHAN. Thank you.

I wish to also state I can't say anything except on the basic provisions in your bill. I personally am in favor of the right of the Attorney Gen-

eral to request of the Board immunity. I think this is essential and necessary. And other provisions you have to strengthen——

The CHAIRMAN. In other words, the Attorney General has a right to immunize, to grant immunities and then, having granted immunity, that shuts out certain defenses by the defendant.

Mr. MAHAN. That is correct.

And yesterday I was before the Senate investigating committee considering the Williams bill, and I listened to the Assistant Attorney General of the United States, who is knowledgeable in such matters as internal security, and he expressed a personal view at this hearing that the Subversive Activities Control Act has done much to control the spread of communism in the United States. And I wish you to know that I share that view.

The CHAIRMAN. I remember in that connection, I remember after the Supreme Court upheld the bare constitutionality of the disclosure proceedings, Gus Hall, the head of the Communist Party, said, "This is just like asking the Communist Party to commit suicide."

I said, "Well, that is fine. I would like to attend the funeral."

Mr. MAHAN. That is correct; they have been opposed to us for some time. [Laughter.]

The CHAIRMAN. And I have said many times that in my opinion, the Smith Act and this act are the greatest tools to fight communism on the books. Don't you agree with that?

Mr. MAHAN. I agree with you, Mr. Chairman.

But here is what the court stated in March of this year, Judge Bazelon: "that there is very much indeed that Congress may do in the pursuit of a single purpose to regulate the Communist Party by the device of disclosure."

And that is what your bills do.

Mr. ICHORD. What case and what court?

Mr. MAHAN. That was the last case that they decided in relation to our Board. It is the *Communist Party, U.S.A.* v. *U.S.A.*, the criminal penalties, where they fined them $230,000.

Mr. ICHORD. A district court case?

Mr. MAHAN. Yes. The language I read was from the court of appeals.

I have it with me and I will leave it with you, Mr. Congressman.[1]

Mr. ICHORD. District court decision?

Mr. MAHAN. This is the United States Court of Appeals for the District of Columbia Circuit.

Mr. ICHORD. Court of appeals decision.

Mr. MAHAN. Yes, sir; and I will leave it with you and put it in the record; pages 6 and 22 in the decision.

Mr. ICHORD. Mr. Chairman, in order to clear up the record, I believe in one question which I directed to you, sir, I lumped Communist-front organizations together with Communist-action organizations. To clarify the record, upon reflection, I believe you do not have under the registration features of the Internal Security Act the power to order a Communist-front organization to register.

Is that not correct?

---

[1] See pp. 357–381.

Mr. MAHAN. Presently, registration applies to both types of organizations.

Mr. ICHORD. The provisions only apply to Communist-action organizations.

Mr. MAHAN. No; we think the provision should be changed so the Communist fronts are not required to register. In other words, we keep our own register. Just like a court, when a court——

Mr. ICHORD. I understand what you are trying to do, but I am talking about the provisions of the Internal Security Act as such.

Mr. MAHAN. Both have to register.

Mr. ICHORD. At the present time, they only apply to Communist-action organizations.

Mr. MAHAN. No, Communist fronts, too.

The CHAIRMAN. Both.

Mr. MAHAN. That is correct.

Mr. ICHORD. Well, now, Mr. Director, could I have the provision of the law there, perhaps I am suffering from a misunderstanding, then. I thought you stated that they only applied to Communist-action organizations, rather than Communist-front.

Mr. MCNAMARA. I stated that the individual members——

Mr. WATSON. While you are looking—excuse me.

Mr. ICHORD. It would be the individual members in a Communist-action organization, the statute did give you authority to order the members of a Communist-action organization to register.

Mr. MAHAN. That is correct.

Mr. ICHORD. That has not been the case with a Communist-front organization.

Mr. MAHAN. That is correct.

Mr. ICHORD. That is the distinction. I wanted to clarify that for the record.

Mr. MAHAN. Mr. Chairman, I wanted to say one other thing.

The CHAIRMAN. Yes, and I think it is a great distinction that ought to be drawn and I approve, I applaud it, because it has been my experience. I wish to direct this question to you, speaking of Communist-front organizations, that used to be called "transmission belts" by the Communists, 30 years ago, but is it not a fact that by and large, at least trying to get some kind of sensible percentage, it has been my experience that with reference to fronts, a large percent of front members are not Communists, they are just suckers. Isn't that true?

Mr. MAHAN. That is correct.

The CHAIRMAN. And that is why I think the act properly draws a difference.

Mr. ICHORD. Well, of course, the gentleman is asking for authority to find whether or not a given organization is a Communist-front organization.

Mr. MAHAN. That is correct, and we agree with your bill, where it changes the laws in relation to proof to prove a Communist-front organization. This came about through——

The CHAIRMAN. The agency holding.

Mr. MAHAN. —The *National Council* case; *National Council of American-Soviet Friendship* versus *Subversive Activities Control Board.*

The CHAIRMAN. Do you agree with my interpretation of that?

Mr. MAHAN. I agree.

The CHAIRMAN. How are you going to prove in all instances that the Communists controlling a front are acting expressly as agents of a Communist-action organization? You just can't do it. It is an insufferable burden.

Mr. MAHAN. It is a burden on the Attorney General's office, you know, too.

The CHAIRMAN. Now let me ask you. I don't know what the previous witness and our general counsel will come up with, but let me ask you this general question: Do you approve the idea of, after the findings of fact by the Board, that the Attorney General should keep a register, or do you think the Board itself? The Board itself no doubt has a register of cases.

Mr. MAHAN. I think the Board itself should.

The CHAIRMAN. It has that, but I think it would be still a good idea to have an additional official list kept by the Attorney General. Don't you agree with that?

Mr. MAHAN. Mr. Chairman, the reason that I say that I feel that the Board should keep its own lists, as the court keeps it own records, the reason I feel that is that some——

The CHAIRMAN. Let me ask you, then. That is a question I intended to ask: If the previous witness can convince our counsel that you should do, you should keep the register, which one would you prefer?

Mr. MAHAN. I would prefer that the Board keep the register.

The CHAIRMAN. Yourself?

Mr. MAHAN. On the basis that I feel that there might be other problems involved since the courts have ruled that the member doesn't have to register with the Attorney General.

The CHAIRMAN. Well, this is looking a considerable number of weeks ahead, because I don't know when we will sit to mark up this bill, but just for my own information, my own edification, anyway, will you prepare words for an amendment that would do that?

Mr. MAHAN. Yes, Mr. Chairman.

The CHAIRMAN. And leave it with counsel.

Mr. MAHAN. Yes.

The CHAIRMAN. I want to discuss it with the members, when we meet in executive session.

Mr. MAHAN. But going back to the Communist front, yesterday at the hearing in the Senate, the Assistant Attorney General informed the Senators that they were investigating at the present time 100 possible front organizations.

The CHAIRMAN. You are talking about Mr. Yeagley, now?

Mr. MAHAN. Yes, that is what he testified to, that they are presently investigating a hundred suspected front organizations, and because of the law, the way it is today, they can't bring many cases. So it is important to change the manner of proof.

The CHAIRMAN. The manner of proof. That is right.

Mr. MAHAN. As your bill does.

I appreciate very much having the opportunity to appear here. I feel that most Americans would rather have preventive medicine by disclosing who these people are. I think it is good for people to know

who they are, because then when they join an organization, and this man has been stated to be a Communist member, they are a little leary of what he does and leary of the organization, and they can protect themselves. The least that the Congress owes the American people, I believe, is to tell them, under a constitutional form of government, who is subversive.

The CHAIRMAN. That is right.

Mr. CULVER. Mr. Chairman, a question.

Mr. Mahan, what is your background, your professional background?

Mr. MAHAN. I practiced law. Dick knows me pretty well. I have been with him off and on since I was about 32.

The CHAIRMAN. In connection with American vets?

Mr. MAHAN. No, I was national commander of the Veterans of Foreign Wars, like Dick was.

Mr. ROUDEBUSH. Veterans of Foreign Wars, now, Mr. Chairman.

Mr. CULVER. Mr. Mahan, for the record, would you please provide——

The CHAIRMAN. Oh, VFW.

Mr. MAHAN. Yes, Mr. Chairman.

The CHAIRMAN. Now I have got it.

Well, you are appearing here, and I hope I can keep in mind that you are appearing here in a dual capacity, as a former VFW commander and as a member and Chairman of the Board. May I assume that to be the case?

Mr. MAHAN. Today I was asked to appear here as the Chairman of the Subversive Activities Control Board.

Mr. CULVER. Mr. Mahan, what is the nature of your academic background?

Mr. MAHAN. I entered the service when I was 18.

The CHAIRMAN. But by saying you appear here as a member of the Board, or Chairman of the Board, you don't mean to say that the VFW's would repudiate you?

Mr. MAHAN. No, I don't think they would.

The CHAIRMAN. Because the legislative director of the VFW——

Mr. MAHAN. Here is my biographical sketch, if you would like it.

The CHAIRMAN. —will be testifying tomorrow.

Mr. CULVER. I would like you to reply to the question. If you would be kind enough to reply to the question. I don't want a biographical sketch. I am very much interested in your personal response.

Mr. MAHAN. I entered the service when I was 18. I became a Marine Corps pilot in World War II.

Mr. CULVER. Are you a high school graduate?

At that time?

Mr. MAHAN. I am a high school graduate. I attended the university and Carroll College in Montana. I attended the University of Montana Law School, 1949.

Mr. CULVER. What was the year of graduation from college?

Mr. MAHAN. 1949.

Mr. CULVER. No, from college.

Mr. MAHAN. 1949.

Mr. CULVER. And the law school, what year?

Mr. MAHAN. 1949.

Mr. CULVER. How long a program was that? What was the date of it? You received simultaneous degrees?

Mr. MAHAN. An LL.B. degree.

Mr. CULVER. You received simultaneous degrees?

Mr. MAHAN. No. I only have one degree, the LL.B.

Mr. CULVER. It was my understanding that you graduated from both law school and college.

Mr. MAHAN. No, I went to undergraduate school. I had to go to prelaw.

Mr. CULVER. Let us do it chronologically.

I think that is a little easier.

You graduated from high school. What year?

Mr. MAHAN. 1941.

Mr. CULVER. And then what was the nature of your activities?

Mr. MAHAN. I entered the military service.

Mr. CULVER. And you served for how long a period?

Mr. MAHAN. The voluntary program in the Navy, and I ended up a Marine Corps pilot, dive bomber pilot. I got out of the service on January 1st of 1946, and I went to school from the time——

Mr. CULVER. What school was that, then, in 1946?

Mr. MAHAN. I went to Carroll College, 1946.

Mr. CULVER. In Nebraska, is that?

Mr. MAHAN. No, it is in Helena, Montana. It is a Catholic college there. Then I——

Mr. CULVER. How long did you attend that institution?

Mr. MAHAN. I attended that for a year. And I attended Montana State University for approximately a year before the war, because I graduated from high school when I was 17.

Mr. CULVER. Then let us go back.

You graduated from high school in 1941.

Mr. MAHAN. 1941.

Mr. CULVER. And then you say you attended what college for a year?

Mr. MAHAN. Montana University School, prelaw.

Mr. CULVER. For 1 year?

Mr. MAHAN. Until the war broke out, and then I joined the Navy.

Mr. CULVER. Did you have 1 complete year of academic training during that period?

Mr. MAHAN. Yes, or partially completed. Well, I will start out first on my educational background.

I attended school first when I was 6 years old.

Mr. CULVER. No, I am interested in the period of your high school graduation, Mr. Mahan.

Mr. MAHAN. I graduated in 1941 from Helena High School. I was the president of the student body, too. I attended the University of Montana. I was president of the freshman class at the University of Montana.

Mr. CULVER. Did you complete that 1 year?

Mr. MAHAN. I completed that 1 year and joined the Navy.

Mr. CULVER. I misunderstood you, then, because from your earlier response, "partially completed," I gathered you were unable to complete that.

Mr. MAHAN. Oh, I completed it. I didn't take one course because I went to Seattle and joined the Navy. Three of us hitchhiked to Seattle and joined the Navy. So one course I didn't complete that year.

I came out of the service as a captain. I then attended Carroll College.

While in the service, I attended St. Mary's, preflight in California.

Mr. CULVER. 1946, this was?

Mr. MAHAN. That would have been in 1942.

Mr. CULVER. When you were discharged?

Mr. MAHAN. No, when I was in the service.

Mr. CULVER. I say, you were discharged, Mr. Mahan, in 1946. Is that correct?

Mr. MAHAN. That is correct.

Mr. CULVER. Then the nature of your education from that point on?

Mr. MAHAN. I received 1 more year of prelaw at Carroll College and at Montana University. Then I went to law school because I met the requirements to attend the graduate school, and I graduated in 1949 from law school with an LL.B.

Mr. CULVER. And also received under that program an undergraduate degree at that time, or just the law degree?

Mr. MAHAN. No; just the law degree. I am fairly close to having another degree, but at that time I had a wife and two children and I had to practice law to make a living.

Then my father was an attorney, but he died while I was going to law school, but he had been an attorney in my town for 20-some years. And he was a past national commander of the Disabled American Veterans of the United States. A very successful trial lawyer. And I practiced law in Helena, Montana, from 1949 until the President appointed me to this Board, 1965.

During that time, I have held about all of the special assistant attorneyships in the State, in relation to workmen's compensation, unemployment compensation, public employees' retirement fund, and so forth.

During that time, I probably have tried 500 criminal and civil cases before juries. And during that time I met Dick Roudebush, and he and I went through the chairs of VFW, which I enjoyed immensely. And during that time, also, Dick sent me to Japan to act as an observer at the Girard trial, when the American soldier shot the Japanese lady. I was over there for some 5 weeks during that trial.

Dick sent me down to Mexico when 32 servicemen were imprisoned in Tijuana without the right of bail. And after about 2 weeks there, we got these men out of prison down there, had their cases brought up.

They lived in filth. It was a terrible situation. I never saw anything like it in my life. One boy was in his cell, and he was suffering from spinal meningitis, and they wouldn't take care of him. Dick remembers all this.

We got all these boys out of jail down there.

Mr. CULVER. How did this position first come to your attention?

Mr. MAHAN. I was called by the White House about 6 o'clock in the morning, in my home in Helena, Montana, and they asked me if I would be interested.

Mr. CULVER. In 1965?

Mr. MAHAN. Yes. I never requested the job, if that is what you mean.

Mr. CULVER. I am just curious. The question was pure and simple. How did the position come to your attention?

Mr. MAHAN. They called, and I said, "I never heard of the Subversive Activities Control Board," and they said, "Well, let us know by 1 o'clock this afternoon if you are interested."

And then——

Mr. CULVER. You were offered it at that time, Mr. Mahan, the position as director?

Mr. MAHAN. What is that?

Mr. CULVER. Were you offered at that time the position as director of the Board?

Mr. MAHAN. A member of the Board.

Mr. CULVER. Member?

Mr. MAHAN. Yes, sir. They told me the chairmanship was open, and I might receive it. The chairmanship of the Board had been in the hands of Governor Cherry of Arkansas for years previously, and he had died, and I took his place. And we have also the other sketches of the other members of the Board, and I will present them to you, if you would like.

Mr. CULVER. What do you think would be lost, in terms of the effectiveness of the administration of your present responsibilities and the Board's as you currently understand them, if it was moved under the directorship and administration of the Justice Department and the Attorney General of the United States?

Mr. MAHAN. I feel that that would be as un-American as you could do it. I don't believe that one organization——

Mr. CULVER. What is un-American about a transfer of governmental authority from one constitutional body to another, under our system of government?

Mr. MAHAN. Maybe I used the wrong terminology. I feel that if a person is to be investigated by one department, prosecuted by the same department, and judged guilty or innocent by the same department, he loses some of the rights of due process which our Constitution should afford him.

I believe that a man should be investigated by one organization, prosecuted by another, and the organization that sits as his court should be independent of that. I believe in the theory of the Subversive Activities Control Board.

Mr. CULVER. When you were an Assistant Attorney General in the prosecutor's office, is that the way it really operated? Has that been characteristic of United States law enforcement historically?

Mr. MAHAN. It is, I think. There are certain boards in the country that have the right to issue orders to show cause, and decide their own cases, but they don't deal with human rights. They deal mostly, like the Federal Trade Commission, with matters that don't involve the first amendment of the Constitution, the fifth amendment, and so forth.

Mr. CULVER. Your basic objection would not be in terms of the effectiveness and the administration of the present responsibilities of your Board as you understand it, but it would really be much more—the constitutional issue which would constitute your major objection to such a transfer?

Mr. MAHAN. This Board has had so much difficulty in the courts that I think it would just add more difficulty to transfer it over to Justice.

Mr. TUCK. If the gentleman will yield on a point of order, I don't believe this is part of the purpose of our hearings.

The CHAIRMAN. Well, I am sure the gentleman will pursue this line not very long.

Mr. CULVER. Mr. Chairman, I can't think of a line that is any more relevant to consideration of legislation affecting the current nature and authority of the Subversive Activities Control Board than to determine whether or not, among those bills before us, that this indeed is, in fact, the best way to accomplish that.

Mr. TUCK. I don't think we have the authority in this field, if we had the will.

Mr. CULVER. I didn't suggest that, Governor.

Mr. TUCK. If we have no authority in the field, why should we pursue an investigation?

Mr. CULVER. I think certainly whether or not the Board's authority should in fact be strengthened, or whether or not it could be more effectively administered is relevant. We have the rare opportunity here to have the Chairman for over a year and a half.

Mr. TUCK. Well, I won't pursue the point.

Mr. CULVER. I certainly suggest that there is a great deal of germaneness to this line of inquiry, but I would yield to the chairman's determination on that point.

The CHAIRMAN. I don't want to rule on it.

Mr. TUCK. I will withdraw any questions I have.

Mr. ICHORD. Will the gentleman yield for one question at this point?

Mr. CULVER. Certainly.

Mr. ICHORD. Who has the responsibility for prosecuting a case before SACB at the present time?

Mr. MAHAN. The Attorney General.

Mr. ICHORD. Under the proposed legislation, both the Dirksen bill and this legislation, who would have the duty of prosecuting the case?

Mr. MAHAN. The Attorney General.

Mr. ICHORD. I thank the gentleman for yielding.

Mr. CULVER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Of course, we are using the word "prosecuting" very loosely.

Mr. ICHORD. Yes.

The CHAIRMAN. It is really a civil matter.

Mr. ICHORD. I don't know what term you could apply, Mr. Chairman, except that perhaps I should have stated who has the responsibility of sustaining or presenting the proof.

The CHAIRMAN. Of bringing the action. Instead of prosecuting, I think bringing the action is more appropriate.

Mr. MAHAN. The Attorney General brings the action, and then he has his attorneys present the United States' evidence on his petition.

The CHAIRMAN. That is right.

Mr. CULVER. Mr. Chairman, just one last question.

How would you distinguish the two holdings affecting the SACB? First, *Communist Party* versus *Subversive Activities Control Board.* What did you understand the holding in that case?

Mr. MAHAN. The criminal case. Is that the one you speak of?

Mr. CULVER. *Communist Party* versus *Subversive Activities Control Board*. 1961? What is your understanding?

Mr. MAHAN. In 1961, they held this act was constitutional in 1961. That was my understanding.

Mr. CULVER. Upheld the Board.

Mr. MAHAN. A five-to-four decision.

Mr. CULVER. Upheld the Board, requiring what?

Mr. MAHAN. Requiring registration.

Mr. CULVER. How about the 1965 case, the Albertson?

The CHAIRMAN. That was a fifth amendment case in 1965.

Mr. MAHAN. That is correct, and in that case they held that we could not force members to register where they invoke the fifth amendment privilege against self-incrimination.

The CHAIRMAN. Individuals to register.

Mr. CULVER. I have no further questions, Mr. Chairman, thank you.

Mr. ROUDEBUSH. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. ROUDEBUSH. I would like to state that it is a rare occasion that two old friends and comrades in arms have a chance to share the position that we share today in a relative sense, Mr. Mahan, and I would like to say for the committee's general edification that I have known John Mahan for about 15 years, that he served as my senior vice commander when I was the national commander of the Veterans of Foreign Wars, and I assigned many responsibilities to him.

He mentioned a couple of these: one, going to Japan on a very ticklish case that involved one of our servicemen and, another, on the case of the servicemen who were held in prison in Mexico.

I would say he served our organization well and with dispatch and with intelligence. I have often taken exceptions to appointments by the President, but I would like to say I was personally delighted when John Mahan was appointed to this position, as he is a great American and eminently qualified for the job.

Mr. MAHAN. Thank you, Mr. Roudebush.

Mr. ICHORD. Mr. Chairman, since the gentleman from Iowa went into educational qualifications, a question arose in my mind. I was rather curious as to the law school; was that a 2-year or 3-year law school?

Mr. MAHAN. No, 3-year law school.

Mr. ICHORD. On what did you obtain credits?

Mr. MAHAN. I went to school in the summer, too.

Mr. ICHORD. Did you get credits for courses which you had taken?

Mr. MAHAN. Yes, I did.

Mr. ICHORD. How many years of prelaw work do you have to take before you enter law school?

Mr. MAHAN. Two years. I had 2 years.

Mr. ICHORD. And you attended 1 year before you went into service?

Mr. MAHAN. Correct.

Mr. ICHORD. And then you obtained another year after service, and then you went into 3 years of law school. Is that correct?

Mr. MAHAN. That is correct; I had a 5-year course. I did it faster than 5 years because I went to summer school on the G.I. Bill of Rights.

Mr. ICHORD. Well, I can join with the gentleman there. I am also a product of the G.I. Bill of Rights.

The CHAIRMAN. Well, as a matter of fact, if we are putting our own background in there, I went directly from high school to law school. I never had a degree except a law degree. I never went to college, so-called, or preparatory course.

Mr. ICHORD. I would state to the chairman that one of the most competent lawyers that I know of in Missouri is a lawyer who studied at a law office and never attended 1 day of college, Mr. Chairman.

The CHAIRMAN. By the way, the dean of our bar in Louisiana was just such a gentleman and, by the way, he became head of the State Board of Education, the head of LSU.

Mr. ICHORD. As long as we are discussing that point, we have a former President of the United States, and who happened to be from Missouri, whom historians are now recording as one of the greatest Presidents.

The CHAIRMAN. Belatedly.

Mr. ICHORD. President Truman. I don't believe he ever attended a day of college.

Mr. TUCK. Mr. Chairman, since we are getting into backgrounds, I have no college degree, only 2 years in college, but several years after I got out of college, they sent for me and gave me a degree.

The CHAIRMAN. Well, I would say, Governor Tuck, we got by. We have been pretty good hogback lawyers at that.

Mr. TUCK. Well, I don't think I am so good, but I have a lot of folks down there who think so.

The CHAIRMAN. That is the important thing.

Mr. MAHAN. Mr. Chairman, in closing, I hope that the committee is able to come out with a bill this year and soon, and put us back to work.

The CHAIRMAN. Thank you.

Mr. MAHAN. Thank you very much.

Mr. ICHORD. Mr. Chairman, I have one question of the gentleman.

We had considerable discussion about legal sanctions which may or may not be triggered by a finding by the Board that a given organization is a Communist or Communist-front organization.

The chairman indicated that he did not feel that the provisions of any bill passed by the committee should provide for sanctions, that this would be merely a finding that the organization was Communist or not.

Do you feel, Mr. Chairman, that any sanctions should be provided for because of the finding of the Board?

Mr. MAHAN. I believe that a person in the Communist——

The CHAIRMAN. The type of sanctions provided in the present law have been thrown overboard.

Mr. MAHAN. No; a man can't work for the United States Government and he can't——

The CHAIRMAN. That is still in the law, that is right.

Mr. MAHAN. And he can't work in a defense facility.

The CHAIRMAN. That is right.

We had some trouble in defense, with the defense facilities.

Mr. MAHAN. It is before the Supreme Court now. It is the Robel case.

The CHAIRMAN. The other provisions of the act have been pretty well carried out.

Mr. MAHAN. In this Robel case, I might state that last year the Supreme Court heard arguments. On the last day of the court, they set it for rehearing. So there is going to be a hearing on the Robel case.

Mr. ICHORD. Well, let us pursue that, then. It is your understanding that under this legislation, if a given individual were a member of, say, a Communist-front organization and you should make a finding that the organization was a Communist-front organization, that any member of that organization would be prohibited from holding Government employment?

Mr. MAHAN. That is correct, and also members of Communist-action groups are denied defense facility employment.

Mr. ICHORD. What provisions or procedures for appeal from the SACB findings would be available?

Mr. MAHAN. Under the bill that you have before you, it is my understanding that if a person is found to be in one of these Communist-action organizations, he could later come before us and state, as the chairman has mentioned, that he was no longer a member of the Communist Party, he was duped into belonging, and he wants his name erased; and he would have that right.

So I think it is safe in relation to that. He could go before our Board, in other words.

Mr. ICHORD. You mean he could go before the Board and say that "I was a member of the Communist Party, but I am not now a member of the Communist Party," and that sanction would not operate against him then?

Mr. MAHAN. Of course, he would have to have adequate proof. The Federal Bureau of Investigation might have evidence on the other side to be presented by the Attorney General to be considered by the Board in making a determination in relation to whether he was.

Mr. ICHORD. Yes, of course, certainly I believe that he should, by reason of his membership in the Communist organization, or Communist-front organization, be a suspect individual, and those things should be considered by persons responsible for his hiring.

But as you testified, it is my understanding that once you found that an organization was a Communist-action organization and that an individual was a member of that organization that he would be prohibited from holding Government employment until he acted affirmatively to remove that stigma or sanction.

Mr. MAHAN. That is correct. I don't think he should be allowed to work for the United States Government.

Mr. WATSON. Mr. Chairman, in that regard, I am sure that you ap-

preciate the fact, Mr. Mahan, that under the provisions of the legislation that we are considering now, you would have the authority to determine whether or not an organization or an individual or an organization in this regard is either one, Communist, Communist-action, Communist-front, or Communist-affiliated.

Mr. MAHAN. That is right.

Mr. WATSON. Or infiltrated, I mean. Infiltrated is the word.

Mr. MAHAN. Yes.

Mr. WATSON. Is it your interpretation that once you have made such a determination that the law would preclude anyone who is a member in either of those classifications——

Mr. MAHAN. Not infiltrated.

Mr. WATSON. Well, I haven't finished my question.

Mr. MAHAN. I am sorry.

Mr. WATSON. Is it your interpretation that the law would preclude them from Federal employment and/or defense facility employment, if they were a member of any of these groups?

The CHAIRMAN. Not infiltrated.

Mr. MAHAN. That is right; every one but infiltrated.

Yes. The infiltrated was a special law that Congress passed, I think, in 1954, an amendment to the act.

The CHAIRMAN. Tell me, based on court decisions, do you know of any court decision trying to spell out what infiltration means in terms of percentage? Do you know of any?

In other words, you see, you can put a drop of ink in a glass of water, and it will be diluted and it will be infiltrated with ink, but up to what percentage? Is there any rule of thumb to measure what infiltration is?

Mr. MAHAN. I don't think there are any court decisions on it.

The CHAIRMAN. I didn't think so. I wanted the benefit of your thought.

Mr. MAHAN. But in relation to your question, a member of a Communist front or a Communist-action group, such as the Communist Party, can't have Government employment.

Mr. CULVER. Mr. Mahan, in the 17 years' existence of the SACB, how many final registration orders have you issued?

Mr. MAHAN. I have the chart here.

Mr. CULVER. I don't need your chart, just numbers.

Mr. MAHAN. Forty-four as to individuals.

Mr. CULVER. Groups?

Mr. MAHAN. No; individual cases.

Mr. CULVER. Party organizations. How many final registration orders have you issued in 17 years? It is eight, isn't it?

Mr. MAHAN. We are counting them.

Mr. CULVER. Is that Mr. Hunter?

Mr. MAHAN. No, Mr. Dirlam. I am sorry.

We left a record of every case here for you, and what has happened to it, since the Board started.

Mr. CULVER. It seems to me for 17 years—and at your own suggestion, you haven't been very busy—you would know how many groups

you had requested to finally register under the law, particularly if it is——

Mr. MAHAN. Eleven, sir.

Mr. CULVER. Eleven. We received information from Mr. Frank Hunter, General Counsel of the Board, that there had been eight. How many of the 11, assuming 11 is the correct figure, how many of the 11 are now defunct?

Mr. MAHAN. While he is checking that, I wish to make this comment: In many of the cases that have been petitioned by the Attorney General, the organizations dissolved before any final registration orders came about. The courts have stated that this means that the purposes of the act, and more, have been accomplished. These, of course, are in addition to the groups that have been finally ordered to register.

Mr. ASHBROOK. Are you sure it is the intent of the act to stop them? It is the intent of the act to bring information to the public so they will know.

Mr. MAHAN. That is correct, but if an organization dissolves—I have the information on them here, such as youth organizations.

The CHAIRMAN. You mean Communist youth?

Mr. CULVER. Mr. Mahan, if I might at this point, in view of the fact that the General Counsel of your Board provided my office some information that the Board has issued eight final registration orders——

Mr. MAHAN. Well, say that is correct, then.

Mr. CULVER. You will say it is correct. I wondered what the other three were, if you give me the list of eight.

Mr. MAHAN. We have this list here for you. We just counted it in a hurry, but if he said eight, eight is right, because Mr. Hunter would say exactly what it was.

Mr. CULVER. Of those eight, then, I wonder how many are now defunct?

The CHAIRMAN. It has been my experience that you can't very well measure with accuracy how long a front organization would last. It will try to last as long as its objective is not achieved. That could be weeks, that could be months, that could be even days. Isn't that correct?

Mr. MAHAN. Correct.

Mr. CULVER. Mr. Chairman, again the General Counsel apparently could be more precise. He suggested that seven are now defunct of the eight, and only the Communist Party——

Mr. MAHAN. Is not defunct.

Mr. CULVER. Is not defunct.

The CHAIRMAN. I don't dispute that, if he said it.

Mr. MAHAN. No, I don't dispute it.

Mr. CULVER. And what has been the annual budget of your organization for the past 17 years?

Mr. MAHAN. It has averaged about $300,000. It is about $5 million the taxpayers have paid in 17 years to determine how far you can go to balance freedom of the individual against national security.

Mr. CULVER. I am just interested in your budget. And your current budgetary request for the administration of your Board is $480,000?

Mr. MAHAN. No; it is $295,000, which was approved by the House.

Mr. CULVER. What is this $480,000 figure? Would that be about the average, would you suppose? Just roughly, estimated?

Mr. MAHAN. $289,500 was what they gave us last year.

Mr. CULVER. That is what you received last year?

Mr. MAHAN. That is correct.

Mr. CULVER. And you have five people on your Board?

Mr. MAHAN. Well, Mr. Sweeney died day before yesterday. We have four.

Mr. CULVER. You have five positions authorized under the law? And those are $26,000 each?

Mr. MAHAN. That is correct.

Mr. CULVER. I have no further questions, Mr. Chairman.

Mr. TUCK. Mr. Mahan, as I understand it, under the present procedure, the Board is powerless to take any action unless the proceeding is instituted by the Attorney General.

Is that correct?

Mr. MAHAN. That is correct, Governor.

Mr. ICHORD. Well, Mr. Chairman, the gentleman from Iowa brought out that of the eight findings you have made, seven of the organizations are now defunct.

Would you say—I don't want to ask you leading questions—but would you say that the decision of SACB contributed to their now defunct status?

Mr. MAHAN. I agree with that. Absolutely.

That is what the Assistant Attorney General of the United States testified to yesterday in the Senate committee that I mentioned earlier.

Mr. WATSON. Mr. Chairman, I have one final question.

I believe, if this bill passes, that it would be your judgment that the processes would be expedited and you would not be confronted with all of the delays that you have encountered in the past.

Mr. MAHAN. That is correct, sir.

Mr. WATSON. There is no process presently whereby you could go directly to the Supreme Court, rather than allowing these defendants to extend and prolong the litigation, even up to 10 or 11 years?

Mr. MAHAN. Today, what they do is they go to a three-man district court and then they go directly from that to the Supreme Court, and they bypass the court of appeals.

Mr. WATSON. But there is no process whereby you could go directly to the Supreme Court?

Mr. MAHAN. That is correct.

Mr. WATSON. Thank you.

The CHAIRMAN. No other questions?

Thank you very much.

Mr. MAHAN. Thank you very much, Mr. Chairman. I appreciate it.

(The court opinion referred to by Mr. Mahan on p. 342 follows:)

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,880

No. 19,881

THE COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

Appeals from the United States District Court for the District of Columbia

---

Decided March 3, 1967

Mr. John J. Abt, of the bar of the Court of Appeals of New York, *pro hac vice,* by special leave of court, with whom *Mr. Joseph Forer* was on the brief, for appellant.

Mr. Kevin T. Maroney, Attorney, Department of Justice, with whom *Assistant Attorney General Yeagley, Messrs. David G. Bress,* United States Attorney, and *George B. Searls,* Attorney, Department of Justice, were on the brief, for appellee. *Mr. Frank Q. Nebeker,* Assistant United States Attorney, and *Mr. Joseph A. Lowther,* Assistant United States Attorney at the time the record was filed, also entered appearances for appellee.

2

Before PRETTYMAN, *Senior Circuit Judge,* DANAHER and MCGOWAN, *Circuit Judges.*

MCGOWAN, *Circuit Judge:* These consolidated appeals are from judgments of conviction under two indictments returned, respectively, on December 1, 1961 and February 25, 1965. Each charged appellant, a voluntary association, with eleven counts of failing to register as a Communist-action organization as required by the Subversive Activities Control Act of 1950, and one count of failing to file the statement which Congress directed should accompany the act of registration. 64 Stat. 987-1005, 50 U.S.C. § 781-98 (1964). Appellant was convicted on all counts of both indictments,[1] with the exception of the registration statement count of the second indictment which the Government abandoned when forced by the trial court to elect between it and the corresponding count in the first indictment. The maximum punishment of a $10,000 fine in respect of each count was imposed. Because we have concluded that the results of the statutory scheme for the control of appellant, when viewed as a whole in relation to these particular punishments, are hopelessly at odds with the protections afforded by the Fifth Amendment, and that scheme if here applied would particularly run counter to the Fifth Amendment's ban on compelled incrimination, we reverse the convictions.

II

The Board order which appellant is charged with failing

[1] The existence of two indictments is explained by the fact that an earlier conviction on the first was reversed by this court in Communist Party v. United States, 118 U.S.App.D.C. 61, 331 F.2d 807, *cert. denied,* 377 U.S. 968 (1964). Before proceeding to try appellant again, the Government sought a second indictment founded upon the same facts as the first, but seeking punishment in respect of continuing violations occurring later in point of time.

to obey was before the United States Supreme Court in *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1 (1961). Challenges of various kinds to its validity were made and, with one exception, explicitly rejected. The exception was one founded upon the Fifth Amendment's self-incrimination clause. The prevailing majority of the Court were of the view that it was premature to resolve the claim that the statute was unconstitutional insofar as it embraced any requirement that the Party's officers or governing members comply with the registration requirements on its behalf. The disposition of this issue, so it was said, could await the time when, if ever, "enforcement proceedings for failure to register are instituted *against the Party* or against its officers." *Id.* at 109. (Emphasis supplied). Four members of the Court dissented from this staying of the judicial hand, and, with varying shades of emphasis, expressed doubts as to the invulnerability of the statutory scheme to Fifth Amendment attack.

This was the state of higher authority when appellant's first conviction came before us. We reversed that conviction (Note 1, *supra*) on the ground that (1) the self-incrimination privilege was available to the officers of the Party, (2) that privilege had in fact been adequately asserted, and (3) to the extent registration could, under the regulations, be effected by an "agent" or "other person," conviction must, at the least, rest upon proof of the availability of such a person.[2] We left the consti-

---

[2] The Act affirmatively requires a Communist-action organization to register as such, and to accompany the registration with a registration statement containing certain information spelled out in the statute. The Attorney General is, however, given the power to prescribe by regulation the form to be used in each instance. The regulations first issued under the Act prescribed a single form which was to be signed by an officer or member of the governing body of

4

tutional issues unstirred for the most part, stating expressly that we ventured "no opinion concerning the Communist Party's duty to submit the data demanded." 118 U.S.App.D.C. at 69, 331 F.2d at 815.

Since this action on our part, a number of things have happened. One is, of course, that the Government has re-tried appellant, and a second conviction is before us on this appeal. Another is that the Supreme Court has addressed itself further to certain aspects of the Subversive Activities Control Act.[3] The most significant of

---

the organization. After *Communist Party* was decided by the Supreme Court, the regulations were amended so as to provide separate forms for registration, on the one hand, and for the accompanying registration statement, on the other. See 28 C.F.R. §§ 11.200-11.201 (1966). Under the amended instructions, neither was required to be signed by an officer, but could be signed instead by a "member, employee, attorney, agent, or other person filing the registration statement . . . [who] shall certify in writing that he has been authorized by the Communist organization to file the registration statement on its behalf." Form IS-51a, issued under regulations *supra*.

[3] In Aptheker v. Secretary of State, 378 U.S. 500 (1964), the Supreme Court, on due process grounds, invalidated Section 6 of the Act, which made it unlawful for any member of a Communist organization required to register to apply for or use a passport. See also Mayer v. Rusk, 378 U.S. 579 (1964). More recently the Court remanded to the Board, because of the staleness of the records made in the administrative proceedings, two orders requiring Communist-front organizations to register. American Committee for Protection of Foreign Born v. SACB, 380 U.S. 503 (1965); Veterans of the Abraham Lincoln Brigade v. SACB, 380 U.S. 513 (1965). In each case Justices Douglas, Black, and Harlan were of the view that the constitutional issues should, without remand, be faced and decided as long overdue. It is also of interest to note United States v. Brown, 381 U.S. 437 (1965), in which the Court struck down, as a bill of attainder, Section 504 of the Labor-Management Reporting

these later adjudications for present purposes is *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70 (1965). In that case the Court made short shrift of our emulation of its restraint in dealing with the self-incrimination claim in the earlier *Communist Party* case; and, without awaiting a tender of the issue in criminal enforcement proceedings, invalidated under the Fifth Amendment a Board order requiring, in default of registration by the Party and as commanded by the Act, registration by persons found to be members of the Party. Although *Albertson* exhibits the self-incrimination issue in a somewhat different posture from that involved in this appeal, both the mode and the manner of the Court's decisive intervention to vindicate the privilege in that case suggest that it is in order for us to come to grips with the issue deferred by it in the *Communist Party* case, that is to say, the essential question of whether, because of its impact on the Party membership, the weapon of compelled disclosure can, consistently with the Fifth Amendment, be trained upon appellant.

---

and Disclosure Act of 1959, which made it a crime for a member of the Communist Party to serve as an officer or employee of a labor union—a disqualification which, as the dissent pointed out, is almost exactly the same as that prescribed in Section 5 (a) (1) (E) of the Subversive Activities Control Act. 381 U.S. at 470. The Government has recently told the Court that it need not even address itself to the legality of the provision in the so-called medicare statute which denies benefits to individuals who are members of organizations required to register under the Subversive Activities Control Act. This provision was, on November 14, 1966, held unconstitutional by a three-judge District Court in the Central District of California (Reed v. Gardner, No. 66-1224-TC Civil); and the Government has decided not to appeal in the face of Elfbrandt v. Russell, 384 U.S. 11 (1966). Cf. Appellee's Suggestion of Mootness, Weiss v. Gardner, *judgment vacated,* 35 U.S.L. WEEK 3278 (February 14, 1967) (No. 904).

III

The Supreme Court's decision in *Communist Party* presumably retains enough vitality to suggest that there is very much indeed that Congress may do in the pursuit of a single purpose to regulate the Communist Party by the device of disclosure. The difficulty is that the purposes of Congress in respect of the Communist Party have not been single in nature. They have, rather, sought in effect to compel both disclosure by the Party and, at the same time, the incrimination of its members. The Congressional enactments applicable to the Communist Party have, severally but simultaneously, exposed it in substance to outlawry as well as to an obligation to disclose its records and affairs. We may assume for the moment that either approach was, and is, constitutionally feasible. We can not, because of the Fifth Amendment, safely assume as much in the case of the co-existence of both purposes.

In *Albertson,* the Court noted (382 U.S. at 79) that the self-incrimination claims there made were "not asserted in an essentially non-criminal and regulatory area of inquiry, but against an inquiry in an area permeated with criminal statutes, where response to any of the form's questions in context might involve the petitioners in the admission of a crucial element of a crime." Earlier in that opinion (at 77) the Court had identified the membership clause of the Smith Act, 18 U.S.C. § 2385 (1964), and Section 4(a) of the Subversive Activities Control Act as "only two federal criminal statutes" it might mention as exposing members of the Party to prosecution. The Court coincidentally characterized itself as having already held that, short of membership, "mere association with the Communist Party presents sufficient threat of prosecution to support a claim of privilege." *Ibid.* Also in *Albertson,* the Court confirmed the conclusion reached by us in appellant's appeal from its first conviction that the immunity provision contained in Section 4(f) of the Act falls short

of the dimensions necessary to blunt the Fifth Amendment claim.

An aspect of *Albertson* not least in significance is the concurring opinion of Mr. Justice Clark, one of those who voted to defer the Fifth Amendment issue in the review proceeding of 1961. He noted (at 85) that the invalidation effected in *Albertson* had been "forecast in 1948" in a letter by him as Attorney General to the Senate Judiciary Committee, responding to a request for the views of the Department of Justice on one of the bills which led to the eventual passage of the Act. That letter voiced the opinion that "the measure might be held (notwithstanding the legislative finding of clear and present danger) to deny freedom of speech, of the press, and of assembly, and even to compel self-incrimination. *Cf. United States* v. *White* (322 U.S. 694)."[4]

Attorney General Clark, as he then was, was far from alone in his fear that Congress was following a dual approach to the Communist Party which might well be self-defeating. A bill which started out as an effort to treat the Party like other political parties in terms of disclosure ended up as legislation which singled the Party

[4] *Hearings on H.R. 5852 before the Senate Committee on the Judiciary,* 80th Cong., 2d Sess. 423-24 (1948). The significance of the Attorney General's reference to *White* lies in this: The bill to which his comments were addressed, H.R. 5852, was introduced in the 80th Congress and known as the Mundt-Nixon bill. Unlike the later bills and the Act as it finally emerged, H.R. 5852 required only the registration of organizations, as distinct from their members. The Attorney General must, therefore, be taken as expressing a constitutional doubt, deriving from the self-incrimination privilege, even where associations alone are involved. His reference to *White,* a case which we discuss in detail hereinafter, suggested his awareness that a differentiation might perhaps be made between organizations and individuals in the availability of the privilege. But apparently *White* did not lay his doubts to rest.

out for subjection to the combined sanctions of compelled disclosure and criminal punishment. As this duality began to take shape more clearly, more and more voices in Congress were raised in warning that irreconcilable goals were being sought; and that, to the extent that publicity for the Communist Party and disclosure of its affairs for all to see was the paramount Congressional objective, it was being jeopardized by parallel efforts to put the Communist Party and its members under the restraints of the criminal law.[5] In floor debate, Senator Humphrey referred to "the testimony of noted lawyers, such as Charles Evans Hughes, Jr., and John W. Davis, who have doubts as to its constitutionality. They believe that it may be in violation of the Fifth Amendment, which provides that a man shall not be required to testify against himself." 96 CONG. REC. 14487 (1950). Several other Senators voiced Fifth Amendment objections, noting the interplay between the disclosure requirements, on the one hand, and the substantive prohibitions of the bill plus the already enacted Smith Act, on the other. *E.g.*, S. REP. No. 2369, 81st Cong., 2d Sess. 12-13 (1950) (Minority Views). Senator Lehman observed that "registration would constitute self-incrimination, if not under the terms

---

[5] The Attorney General's letter just referred to noted this intermingling, which was the source of his Fifth Amendment doubts, in these terms:

> The bill represents two distinct statutory efforts—one directed to the prohibition and punishment of subversive activities as such, and the other a registration statute calculated to effect disclosure of the identity and propaganda of individual Communists and Communist organizations. Within this framework there have also been incorporated certain other regulatory provisions relating to the general problem. The subversive activities and registration sections of the bill cannot, from a legal standpoint, be separate, but must be judged as a whole.

Id. at 423.

of this law, then under the terms of the Smith Act"; and that to require in the same bill the registration of Communists and their jailing for being Communists was "a parody on legislation." 96 CONG. REC. 14190, 15694 (1950). President Truman, although addressing his veto message largely to the practical futility of the measure, captured the essence of the legal objection in his characterization of the final product as tantamount to "requiring thieves to register with the sheriff." 96 CONG. REC. 15630 (1950).

Quite apart from the impact of other provisions of the 1950 legislation upon the registration requirements, there was the problem of the Smith Act, which had become law in 1948. On the same day the Supreme Court upheld the Board's order as against every attack except that of self-incrimination, it also affirmed the criminal conviction of a Communist Party member under the so-called membership clause of the Smith Act. *Scales* v. *United States*, 367 U.S. 203 (1961). With this decision, any doubts about the constitutionality of the Smith Act in its fullest reach—and there had been many, both before and after its enactment—were set at rest, with the most ominous criminal implications for the Communist Party and all those associated in any way with it. Such chance of constitutional survival as the disclosure approach to regulation of the Communist Party may have theretofore had perhaps foundered upon the reef of *Scales*.

Congress's very success with its direct assault upon the Communist Party through the sterner medium of the criminal law could only have had the effect of undermining the constitutional foundations of its disclosure approach. So long as the self-incrimination clause of the Fifth Amendment endures, activity may be made criminal, but the actor cannot be compelled to characterize it as such and to disclose it.[6] If Congress would do the one,

[6] Although Lewis v. United States, 348 U.S. 419 (1955), and United States v. Kahriger, 345 U.S. 22 (1953), concerned

it may have to forego the other. The choice by Congress of the means it believes more effective remains with it.

IV

It may be questioned whether appellant is helped even if these premises are accepted as true and the result in *Albertson* embraced as a necessary consequence of them. If the self-incrimination privilege is personal in the sense of not being available to corporations and associations, how may appellant—a self-described voluntary association—interpose the privilege as a shield against criminal prosecution of itself for failing to make the disclosures required by the Act? This question is highly pertinent and not easy of resolution. We think, however, that it rests upon

---

the constitutionality of a federal wagering tax which required those subject to it to register with the taxing authorities despite the illegality of such an occupation under the laws of the jurisdictions where the cases arose, the grounds offered in support of the sustaining of the gambling tax in those cases are not relevant here. The Court there found that registration was only a condition to wagering in the future and hence did not require confessing to any criminal acts that had theretofore been committed. It is worthy of note that in an array of cases, amongst them Costello v. United States, 352 F.2d 848 (2d Cir. 1965), *cert. granted,* 383 U.S. 942 (1966), the Supreme Court has accepted for review the question: "Do not the Federal wagering tax statutes here involved violate the petitioner's privilege against self-incrimination guaranteed by the Fifth Amendment? Should not this court, especially in view of its recent decision in Albertson v. Subversive Activities Control Board . . . overrule United States v. Kahriger . . . and Lewis v. United States . . .?" *Inter alia,* Marchetti v. United States (No. 38), Markis v. United States (No. 43), summarized at 35 U.S.L. WEEK 3009 (July 5, 1966). See generally Mansfield, *The Albertson Case: Conflict Between the Privilege Against Self-Incrimination and the Government's Need for Information,* 1966 SUPREME COURT REVIEW 103, 151-58 (Kurland ed.).

premises formulated in respect of circumstances vastly different from those involved here—so much so, indeed, that the policies they serve are mostly irrelevant to the issues which must be faced in the present context.

The doctrine that corporations and associations have no privilege has largely been enunciated in cases where an individual was sought to be criminally punished for refusing to produce records belonging to the entity and kept in the course of its business.[7] It was thought that

---

[7] An early such case was Hale v. Henkel, 201 U.S. 43, 66-70 (1906), where it was held that corporate officers must testify as to corporate activities and produce corporate documents before a grand jury investigating Sherman Act violations where such individuals are accorded immunity from subsequent antitrust prosecution. In Wilson v. United States, 221 U.S. 361 (1911), the doctrine was extended to require a corporate officer to produce corporate documents even when he pleaded they might incriminate him personally. It has since become settled that officers of corporations cannot escape contempt liability for refusing to produce corporate books and papers on a claim that they contain incriminating information. *E.g.*, Nilva v. United States, 352 U.S. 385, 392 (1957); Heike v. United States, 227 U.S. 131 (1913); Dreier v. United States, 221 U.S. 394 (1911). The rule extends, the Court has held, to compelling former corporate officers to produce papers that had passed to them when the corporation was dissolved. Grant v. United States, 227 U.S. 74 (1913); Wheeler v. United States, 226 U.S. 478 (1913). Nonetheless an officer may refuse to give oral testimony as to corporate matters if they would personally incriminate him. See Shapiro v. United States, 335 U.S. 1, 27 (1948); Wilson v. United States, 221 U.S. 361, 385 (1911).

The doctrine that the privilege is not available to protect corporations from criminal punishment has become almost an article of faith, although the question did not arise as early or as often as did cases concerning orders directed to corporate officers. See, *e.g.*, United States v. Bausch & Lomb Optical Co., 321 U.S. 707, 726-27 (1943); Essgee Co. v. United States, 262 U.S. 151 (1923); Baltimore & Ohio RR. v.

to hold that the privilege applied would interfere intolerably with the visitatorial powers of government over artificial entities existing by public sufferance; and it seems clear that effective governmental regulation was regarded as jeopardized by conferring a constitutional cloak of secrecy upon corporate proceedings. If corporations were to be made legal at all, then their internal affairs should be amenable to public scrutiny.[8]

ICC, 221 U.S. 612, 622 (1911); American Lithographic Co. v. Werckmeister, 221 U.S. 603, 611 (1911). A factor in the widespread acceptance of the doctrine is of course that, after denying corporate officers the privilege for reasons relating to the necessity of regulating corporations, it would seem incongruous to grant such a privilege to the corporation itself. The Court's recent decision in *Albertson* would appear to extend in scope to officers of an association who apparently differ in no wise from corporate officers in terms of official capacity, from which it can only be inferred that the Court takes some account of differences in the natures of the artificial entities involved.

[8] See Meltzer, *Required Records, The McCarran Act, and The Privilege Against Self-Incrimination*, 18 U. CHI. L. REV. 687, 701-04 (1951). Professor Meltzer has directed the same discerning eye he has turned upon the merits of the Fifth Amendment privilege itself to criticism of the various theories offered to support denying it to corporations. He finds most of these rationalizations less than cogent: *viz*, the theory that by becoming a corporate officer an individual has "waived" his privilege against self-incrimination distinguishes inadequately assertion of the privilege in the corporate record context from occasions where its invocation is thought legitimate, as when he is called upon to testify orally. Professor Meltzer notes also that, although the doctrinal arguments based upon the necessity of corporate regulation were undoubtedly the "considerations of expediency" underlying the refusal to grant the privilege to corporations, they "begged the essential question—the extent to which the visitorial power was subject to the constitutional provisions against self-incrimination." *Id.* at 702. Perhaps that central question can be resolved only in individual circum-

13

In a contempt prosecution of a labor union official for failing to produce union records before a grand jury, a claim of privilege was similarly unavailing, and for essentially the same reasons. The absence of a privilege assertable by or on behalf of the union, an unincorporated association, was said by the Supreme Court to be dictated by the need to assure effective regulation of "the scope and nature of the economic activities of incorporated and unincorporated organizations." *United States* v. *White*, 322 U.S. 694, 700 (1944).[9] As in the case of corporations,

---

stances, when the interests of the government in disclosure are balanced against the individual or associational interests represented by the privilege. It is worthy of note that the case in which the absence of the corporate privilege was first noted arose out of antitrust charges. *Cf.* Hale v. Henkel, *supra* note 7.

[9] The Court's reference in *White* to the necessity of effective regulation of the "economic" activities of incorporated and unincorporated organizations is not without significance. One who invests in a corporation or joins a labor union commits himself to the collective pursuit of economic ends, and the unit itself is mainly significant as a vehicle for the accomplishment of these joint economic purposes. Perfectly lawful in itself and, indeed, permitted only to exist by the favor of the law, a business corporation may in operation fall afoul of a multitude of public purposes embodied in regulatory laws with criminal sanctions. If these may be frustrated by the self-incrimination clause, then the only answer may be to abandon the corporate or associational concept—an exigency which few would now regard as in the public interest. An association of those who come together because of mutually congenial religious or political principles is arguably of a different stripe. The First Amendment has long been thought to be concerned with reasonable latitude to do just this, whereas the right to form a corporation or labor union is nowhere guaranteed in terms by the Constitution. Moreover, a man's beliefs are customarily regarded as closely akin to his "purely private or personal interests," and not even his association with a

the public interest in continuing access to the information relevant to regulation justified this restriction of the privilege. The test for allowing or withdrawing the privilege was formulated by the Court in these terms (322 U.S. at 701):

> This conclusion is not reached by any mechanical comparison of unions with corporations or with other entities nor by any determination of whether unions technically may be regarded as legal personalities for any or all purposes. The test, rather, is whether one can fairly say under all the circumstances that a particular type of organization has a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only. If so, the privilege cannot be invoked on behalf of the organization or its representatives in their official capacity.

A standard of differentiating between organizations in terms of their "impersonal," as distinct from their "personal," character is admittedly elusive in meaning and difficult of application. It is clear, however, that the Supreme Court was not prepared to say that the privilege was without significance in respect of any and all organizations under any and all circumstances.[10]

---

church or a political party converts them into the property of the entity. It is because the Communist Party has appeared to offend in this regard more than any other that it has become entangled with the criminal law, but this involvement is the occasion of our Fifth Amendment problem and not its solution.

[10] The Court has, since *White*, found renewed life for the privilege as it relates to associational activities. In Curcio v. United States, 354 U.S. 118 (1957), the contempt citation of a union official who refused to tell the whereabouts of documents which he said were not within his control was reversed on the ground that, despite *White*, the

15

Short of trying, in the abstract, to sort out associations for whom the privilege has meaning from those for whom it does not, it is useful to recall the reality which underlies them all. Although the law has made room for the concept of an artificial entity which, for some purposes at least, has a life separate and distinct from the individuals who comprise it, it remains the fact that no such entity can act other than through human instrumentalities. Behind the corporate veil or the associational facade, there are always people—officers, stockholders, members. In the case of business corporations and labor unions, decisions like *Wilson* and *White* mean that the constituent individuals cannot, by reason of a claim of privilege, be excused from acting to provide the information demanded. This is because the public interest in the disclosure of

---

privilege continued to protect oral testimony. McPhaul v. United States, 364 U.S. 372 (1960), does not control our decision here. In that case the Court upheld the contempt conviction of an officer who refused to produce records of his organization, the Civil Rights Congress, before the House Committee on Un-American Activities. *McPhaul* arose out of an essentially informational Congressional investigation rather than a pervasive regulatory scheme of disclosure administered by the Executive branch in a criminal area; and the decision went off on the point, strongly contested by the dissent, of whether the government's failure to show the existence of the records and the defendant's ability to produce them before the contempt citation was entered violated the presumption of innocence in his favor. Rogers v. United States, 340 U.S. 367 (1951), cited in *McPhaul* as indicating the unavailability of the privilege, is *dictum* on that point, for that case turned on waiver of the privilege in circumstances where the witness had already admitted her membership and office in the Communist Party to the grand jury and had invoked the privilege only as an "afterthought" when she was brought before the District Court. See 340 U.S. at 370-72; *id.* at 379 n.7 (dissenting opinion of Mr. Justice Black).

the particular entity's affairs is deemed to be paramount; and, since that disclosure can only be effected by the act of some individual, he may be compelled to respond despite the Fifth Amendment. If he does not, both he and the entity, which necessarily remains inert without his action, can be subjected to criminal sanctions.

But, in the case of appellant and the Subversive Activities Control Act, we have heretofore held that criminal punishment may not be imposed for failure of appellant's officers to make the required disclosures on appellant's behalf. *Communist Party* v. *United States,* 118 U.S.App. D.C. 61, 67, 331 F.2d 807, 813, *cert. denied,* 377 U.S. 968 (1964). And now the Supreme Court has, in *Albertson,* declared that the members of appellant may not, in the face of a claim by them of the privilege, be criminally punished, as contemplated in the Act, for failing to supply the principal item of information called for by the statute, that is to say, the membership list. The reasoning of *Albertson* with respect to members of the Party would appear to have clear application to officers who are, if anything, even more dangerously exposed to self-incrimination. This, to say the least, leaves appellant in a position sharply contrasting with that of the artificial entities involved in cases like *Wilson* and *White.* It has been commanded by the Congress, on pain of criminal punishment, to come forward and reveal its affairs, but the Court has said that, in the climate of criminality created by other legislation, the persons who could accomplish those revelations need not do so by reason of the Fifth Amendment.

To the lay observer equipped only with a sure sense of logic and unconfused by the legal lore of the assertedly personal nature of the privilege, this all might suggest that the Act, like King Canute, vainly commands the impossible; and that the legislative scheme has a flavor of irrationality in a due process sense. But this condition

of ineffectiveness to encompass the criminal punishment of appellant for something it lacks the means to accomplish derives in the last analysis from the Fifth Amendment's privilege against self-incrimination. The result is surely the same whether it be stated in terms of the availability of the privilege to appellant because of its distinctive nature or whether it be said that it is a violation of the privilege concededly available to the individuals associated with appellant to condition its exercise upon the sacrifice of their First Amendment rights to associate together as a political party. In either formulation, it is the First Amendment which provides the distinctive background against which the reach of the Fifth must be defined; and, in either formulation, the Constitution, on the facts of this record, stands between appellant and the criminal punishment sought to be laid upon it.

It is important to recall that no political party, including most especially the Communist, is automatically guaranteed against regulation by means of disclosure.[11] It is

---

[11] In 1954, four years after the passage of the Act with which we are concerned, Congress purported to find and declare that appellant is not a political party at all and "should be outlawed." This statute—the Communist Control Act of 1954, 68 Stat. 775-77, 50 U.S.C. 841-44 (1964)—purported to deny to appellant all of the rights, privileges, and immunities available to other legal entities, but it included a statement to the effect that nothing in it should be construed as amending the Internal Security Act of 1950, of which latter statute the Subversive Activities Control Act is a part. This prudential proviso reflected the apprehensions of those in Congress who thought that the regulation-by-disclosure approach of the last-mentioned statute was gravely jeopardized, in its applicability to appellant, by the 1954 law. In *Communist Party,* decided seven years later, the Supreme Court, although relying heavily on the legislative findings of the 1950 statute in upholding the registration order as against First Amendment attack, referred to the 1954 findings only in a context of saying that there

when the legislative judgment is that disclosure is not enough and goes on to fashion criminal prohibitions as well that the efficacy of disclosure is imperilled by the Fifth Amendment. What we say here imposes no limita-

---

was nothing to indicate that the Board had been prejudicially influenced by them in reaching its decision that appellant should register as a Communist-action organization.

The majority in *Communist Party* did not intimate that appellant was not a political association within the general purview of the First Amendment. It held, rather, that it was a currently erring one, which could restore itself to grace by mending its ways; and that the First Amendment did not protect appellant from disclosure because, as a party, appellant could be found by the evidence to have come under the dominance of a foreign country and thereby to have become but one of the sections, in the Congressional language, "of a world-wide Communist organization . . . controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country." Although these words today may have an ironic ring in the ears of the foreign power in question, and in any event have not appeared to constitute the sole assumption upon which our foreign policy has been conceived and executed since they were placed on the statute books, we may assume that, as did the Supreme Court in *Communist Party*, they were true as of that time. Compare Block v. Hirsh, 256 U.S. 135 (1921), with Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924), in which latter case Justice Holmes observed that, to the extent a Congressional declaration of fact looks to the future, "it can be no more than prophecy and is liable to be controlled by events." *Id.* at 547. The efficacy of the legislative findings in this instance has been very considerable indeed, in that they appear to have been given great weight by the Supreme Court in upholding the registration order as against First Amendment challenge, thereby making it possible for the Congress to regulate appellant by the disclosure technique. They do not conclude the issue of the possible Fifth Amendment impediment to the utilization of that approach coincidentally with that of the criminal law. Were it otherwise, there would have been no reason for the Court to have reserved the Fifth Amendment issue.

tions upon the exertion of either approach in its fullest sweep. We speak only to the self-incrimination problem presented by the simultaneous employment of both.

It is important to turn from generalities to an examination of the position in which this record shows appellant to have been placed. At a time when, as the Supreme Court has now said, appellant found itself in "an area permeated with criminal statutes," where even mere association with, much less membership in, appellant presented a serious "threat of prosecution," appellant is first declared by the Board to be a "Communist-action organization" which, by statutory definition, is an organization "substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in . . . this title," and which "operates primarily to advance the objectives of such world Communist movement . . ." By virtue of this declaration, appellant is required to register itself as a "Communist-action organization" and to supply, in addition to its name and address, the names and addresses of its officers and members (including those who have been such during the preceding 12 months); a statement of the functions and duties of the former; the *aliases,* if any, of such individuals; all moneys received and expended, including sources and objects; and a list of all printing presses or machines owned, controlled, or possessed by any of them. Once so registered, an annual report of all such information is required. There is a further requirement that each such registered organization shall keep accurate records of receipts and expenditures, and of the names and addresses of its members and of all persons who actively participate in its affairs.

Faced with these requirements, appellant wrote a letter to the Department of Justice on a letterhead showing the Party's name, address, and telephone number. The letter was signed in appellant's name "by its authorized officers."

It advised the Department that its officers declined, by reason of the Fifth Amendment privilege, to supply, or to authorize the supplying of, the additional information called for by the registration requirements. The letter also advised that appellant, on behalf of its members, asserted the privilege of each of them against self-incrimination by the listing of his name or the furnishing of the other information called for.

The Government rejected this claim of privilege, and appellant was indicted. Its first conviction was reversed by us as hereinabove described. At the second trial, the Government sought to supply the deficiencies of proof alluded to by us in our opinion of reversal. The new elements of proof at the second trial consisted of two witnesses who had joined appellant in 1953 and who had served as paid informers of the Federal Bureau of Investigation throughout their entire periods of membership. Each testified to a willingness to sign the registration forms and to supply the requisite information if it were made available to them by appellant, which is to say, by some officer or member of appellant.

The record is devoid of any suggestion of the availability of any officer or member of appellant (not a paid informant), or indeed of any third person, with access to the necessary information, who has the requisite authority and capacity to supply the information called for, and who is prepared to do so. *Albertson* teaches that any such person cannot, consistently with the Fifth Amendment, be made to do so. Since appellant cannot, in the nature of things, act except through such a person, a legislative scheme premised upon such action in essence comprehends the collective punishment of persons for their constitutionally protected right as individuals to refrain from that action.

For appellant to file a list of its members exposes every person on that list to a serious and substantial "threat

of prosecution." The only people with the authority and capacity to compile an authentic such list and to authorize its use for registration purposes would, by that very act, subject themselves to a like threat. No such person has demonstrated a willingness to act. To differentiate under these circumstances between the criminal punishment of the association, on the one hand, and the individuals who make of it a collective personality, on the other, seems to us incompatible with the purposes and values underlying the Fifth Amendment. It is to make the mere fact of association the vehicle for subjecting the individuals, collectively as well as personally, to criminal prosecution, shorn of the protection of the self-incrimination privilege.[12]

The statutory scheme before us accordingly must yield to the urgency of continuing recognition of the vitality of the Fifth Amendment protections. Liability of the appellant to the command of the statute can not be

[12] *Albertson* now assures to each individual Party member his Fifth Amendment right not to incriminate himself by registering under the Act. If the Party is denied the privilege, the membership of the individual must be disclosed in the course of the Party's registration. Under such circumstances, the privilege against self-incrimination is effectively conditioned upon abstention from association with others of like persuasion. In *Aptheker*, Note 3 *supra*, the Government argued that a member of a registering organization could recapture his freedom to travel by abandoning his membership. But the Supreme Court turned this contention aside by saying that "[S]ince freedom of association is itself guaranteed in the First Amendment [citations omitted], restrictions imposed upon the right to travel cannot be dismissed by asserting that the right to travel could be fully exercised if the individual would first yield up his membership in a given association." 378 U.S. at 507. In two very recent decisions, Garrity v. New Jersey and Spevack v. Klein, both decided January 16, 1967, the Court has stressed the importance of free and unfettered choice to assert the self-incrimination privilege. 35 U.S.L. WEEK 4135, 4140 (Nos. 13, 62).

vicariously imposed because of the failure of its members to meet the requirements of registration where, as the Supreme Court has made clear, they as individuals are so protected.

In the areas of First Amendment concern, such as politics and religion where the association of people together is of the essence of meaningful observance and expression, we see no inescapable necessity to limit the reach of the Fifth Amendment by technical theories of artificial legal personality. If Congress chooses to find some principles and practices of politics or religion so abhorrent as to warrant criminal liability, it may conceivably do so in a proper case. But to be placed beyond the pale of the First Amendment is not to be deprived of the Fifth. It is, rather, the very reason for its being; and that reason invalidates the criminal convictions of appellant under the circumstances of this case.

The judgments of conviction appealed from are

Reversed.

PRETTYMAN, *Senior Circuit Judge,* concurring: I agree that the disclosure provisions of this statute are valid in and of themselves, and I agree further that the provisions for criminal sanctions are valid in and of themselves, separately. Upon the problem whether the combination of the two, as presented to us on this record, is valid, I reach the same result as do my brethren, but by a slightly different course of reasoning.

The Communist Party is an unincorporated association, and, being an incorporeal entity, it can perform physical acts, such as signing and filing, only through the instrumentality of human individuals. Therefore, when the statute requires the Party to sign and file, it is in

reality requiring some individual to sign and file. The Government seeks, by threat of punishment of the Party, to compel an individual to sign and file a list of the Party members.

Membership in or association with the Communist Party involves such a threat of prosecution as to give rise to Fifth Amendment rights in members or associates. The Supreme Court so said in *Albertson*,[1] and in that case the Court held that members of the Party cannot be compelled to sign and file on behalf of themselves a statement that they are members. It seems clear to me that in view of that decision Party members cannot be compelled to sign and file on behalf of anybody or anything else a statement that they, the signing individuals, are members of the Party.[2] The constitutional protection is against compulsory incrimination of oneself. The means or method of the compulsion are immaterial so long as there is compulsion. Therefore the members cannot be compelled to incriminate themselves in order to protect the Party against punishment.

Furthermore, since the Party is an unincorporated group of individuals, the fine upon the Party is in reality a fine upon the individuals comprising the Party. I think no member of an unincorporated group can be compelled to incriminate himself in one respect in order to avoid another criminal punishment threatened against him as a member of the group.

In this consideration it makes no difference whether the group as such is constitutionally protected or not. The individual is protected as an individual, no matter in what

---

[1] Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965).

[2] *Cf.* Communist Party of the United States v. United States, 118 U.S. App. D.C. 61, 331 F.2d 807 (D.C. Cir. 1963), *cert. denied*, 377 U.S. 968 (1964).

capacity. If the compulsion is visited upon him through the intermediary group as a conduit, the compulsion is forbidden. The cases, like *White,*[3] which hold that an officer of an association can be compelled to incriminate himself by revealing group records, rest upon the thesis that the public interest in the visitorial power over associations nullifies the individual officers' Fifth Amendment protection. But that thesis does not apply here, because *Albertson* held that the Fifth Amendment rights of Party members do not yield to the public interest in the disclosure of the Party membership.

The suggestion is made that a volunteer might come forward and register the Party and that the two F.B.I. agents (undercover members) are such volunteers. But those two, willing though they be, do not have the wherewithal to register the Party; they do not have the list of the membership. So the question is whether the officers or some member can be compelled to supply the willing volunteers with copies of the list. The purpose for which the volunteers want the list is to file it, thus bringing upon the listed members a threat of criminal prosecution. It seems clear to me that a person cannot be compelled to supply another person (volunteer or not) with the means by which to incriminate the first person. This is two-step incrimination, but it seems to me that the person is incriminating himself just as effectively as if he himself handed the list to the Government; and he cannot be compelled to do it.

The same reasoning as that outlined in the preceding paragraph applies to the suggestion that the Party might hire an agent and pay him a fee to execute the registration. It might, of course, but our problem is whether it can be compelled to do so. It seems to me close to frivolous to suggest that a person protected by the Fifth Amend-

[3] United States v. White, 322 U.S. 694 (1944).

ment can be compelled to hire an agent, furnish him with the means to instigate a criminal prosecution against him (the giver), and then authorize him (the agent) to do so.

I think the Government cannot compel people to incriminate themselves, either by testifying or by supplying documentary evidence, and either by themselves supplying an incriminatory document or by giving it to a volunteer or a hired agent to give to the Government. In short, I think a person cannot be compelled to incriminate himself, either directly by his own action or by a second-, third- or fourth-hand action through some complicated intermediary process.

I emphasize that no part of my thought rests upon Fifth Amendment rights of the Party itself. I am concerned only with the Fifth Amendment rights of the individual members or agents.

I think a statute which requires members or agents of an unincorporated organization to incriminate themselves in order to protect their organization against a fine in a criminal action is invalid as thus applied.

84-351 O - 67 - 8

The CHAIRMAN. Our next witness is Mr. Stanley Tracy, former Assistant Director of the Federal Bureau of Investigation.

Stanley, will you come forward, please?

STATEMENT OF STANLEY J. TRACY,[1] FORMER ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

The CHAIRMAN. Proceed, Mr. Tracy.

Mr. TRACY. Mr. Chairman and Members of the Committee: It is a pleasure to appear before your committee, and in connection with the proposed legislation in H.R. 10390. I have been engaged in internal security work for many years. I was associate counsel of the Commission on Government Security that studied all the Federal security programs in 1956–1957 and submitted a report to the Congress in 1957. We made recommendations for legislation in each one of the Federal security programs.

Now, I have followed the work of this committee for many years, and I would like to congratulate the present members and past members of the committee for the work that you have done.

I think that this committee has run into many difficulties, has been subject to much abuse over the years, and I think you have done an invaluable service in protecting the rights of American citizens in this field of internal security.

I don't think that we have been faced, in the history of our country, with greater threats than we are today, internationally. Our foes have more formidable means of destruction than they ever had; therefore, I hope that this committee will consider the recommendations of the Commission on Government Security, because it was the Congress that created the Commission.

In 1955 the Congress itself found it is the policy of the Congress there shall exist a sound Government program.

Secondly, the Congress found, in Public Law 304, passed in 1955, it is vital to the welfare and safety of the United States that there be adequate protection of the national security, including the safeguarding of all national defense secrets and public and private defense installation against loss or compromise arising from espionage, sabotage, disloyalty, subversive activities, or unauthorized disclosures.

It was pursuant to this policy statement that we studied every program and made our recommendations. So I ask that this committee, in these hearings today, include the summary of recommendations which is contained in the front of our report.

It only covers five or six pages. It is very short, and I ask that that be included in the record.

The CHAIRMAN. Well, it will be added, if it is only four or five pages long, in the record at this point.

Mr. TRACY. Yes, sir, it is very short.

(The information follows:)

---

[1] *Stanley J. Tracy,* an Assistant Director of the Federal Bureau of Investigation for 13 years prior to his retirement in 1954, is presently a member of the strategy staff of the American Security Council. He served as associate counsel of the Project Survey Division of the Commission on Government Security, 1956–57. He received his LL.B. degree from the George Washington University Law School in 1925, is a member of the bars of the State of Utah and the District of Columbia, and has been admitted to the U.S. Supreme Court bar. Prior to joining the FBI in 1933, he had served with the Department of Labor, the Naturalization Service and the Veterans Administration.

Summary of Recommendations

The Commission's recommendations, if put into effect, would enhance the protection afforded national security while substantially increasing the protection of the individual.

The Commission recommends retention, with fundamental revisions, of the programs affecting Federal civilian and military personnel, industrial security, port security, employees of international organizations, the classification of documents, passport regulations, and the control of aliens. In addition, the Commission recommends an entirely new program to safeguard national security in the vital operations of our civil air transport system.

At the core of the Commission's plan for a uniform, comprehensive, and practical security mechanism is its recommendation for a Central Security Office to provide a continuous study of security needs and measures, conduct loyalty and security hearings, and furnish advisory decisions to heads of government departments and agencies.

And at the very basis of the Commission's thinking lies the separation of the loyalty problem from that of suitability and security. All loyalty cases are security cases, but the converse is not true. A man who talks too freely when in his cups, or a pervert who is vulnerable to blackmail, may both be security risks although both may be loyal Americans. The Commission recommends that as far as possible such cases be considered on a basis of suitability to safeguard the individual from an unjust stigma of disloyalty.

Some problems, such as the maintenance and use of the Attorney General's List, the right to subpena witnesses, and the extent to which the principle of confrontation is applicable in security cases, cut across the entire field of loyalty and security problems and are subjects of special recommendations.

CENTRAL SECURITY OFFICE.—The Commission recommends an independent Central Security Office in the executive branch of the Government. One of the principal deficiencies of past loyalty and security programs has been a shortage of trained, qualified personnel to administer them. Hence, the first duty of the director of the proposed central office would be to select eminently qualified personnel, including hearing examiners to conduct loyalty hearings under the Federal civilian employe program and security hearings under the industrial, atomic energy, port and civil air transport programs. The Central Security Office would also assist the various agencies, through consultations and conferences, in training screening and other security per-

sonnel. A Central Review Board would review cases, on the record, as appealed from adverse decisions of the heads of agencies. Decisions of both hearing examiners and the Central Review Board would be advisory only to agency heads. The various loyalty and security programs of the Government would be reviewed and inspected to insure uniformity of rules, regulations and procedures; however, the Central Security Office would not have authority to review secret or other files of any agency. Complaints from industry relating to the various industrial security programs would be received and, through conferences with industry and the interested Government agencies, inconsistencies and duplications would be corrected.

Attorney General's List.—The Commission believes that the Attorney General's list of proscribed organizations, or something similar to it, is essential to the administration of the Federal loyalty and security programs. While it therefore recommends continuance of the list, the Commission also recommends a number of major changes to minimize possible abuses. The Commission recommends a statutory basis for the list and that future listings be authorized only after FBI investigation and an opportunity for the organization to be heard by examiners of the Central Security Office, with the right of appeal to the Central Review Board. Decisions of the examiners and the Central Review Board would be advisory to the Attorney General.

Subpena Power.—In the past, neither the Government nor any person involved in loyalty or security cases could compel attendance of witnesses at hearings. The Commission would give the hearing examiners the power of subpena, with wide discretionary latitude to prevent excessive costs, unnecessary delays, and obstructive tactics. Witnesses would be allowed travel and per diem expenses. The Government would pay witness costs only for an individual who was cleared by the hearing.

Confrontation.—The Commission recommends that confrontation and cross-examination be extended to persons subject to loyalty investigations whenever it can be done without endangering the national security. Those whose livelihood and reputation may be affected by such loyalty investigations are entitled to fair hearings and to decisions which are neither capricious nor arbitrary. It is the prime duty of Government to preserve itself, and in the carrying out of this duty it has the indisputable obligation to avail itself of all information obtainable, including information from confidential sources. Full confrontation, therefore, would be obviously impossible without exposing the Government's counterintelligence operations and personnel with resulting paralysis of the Government's efforts to protect the national security. The Commission recommends that, where loyalty charges are involved, no derogatory information, except that supplied by a regularly established confidential informant engaged in intelligence work for the Government whose identity may not be disclosed without compromising the national security, shall be considered over the objection of the individual involved unless such individual is given the opportunity to cross-examine under oath the person supplying such derogatory information. Where the informant

is not available for process by reason of incompetence, death or other cause, the derogatory information may be considered, but due regard must be given to the absence of opportunity to cross-examine.

FEDERAL CIVILIAN EMPLOYEES.—The program recommended for civilian Government employees consists of a loyalty program applicable to all positions and a suitability program within the framework of civil service regulations. In the executive branch, the Commission would exclude the Central Intelligence Agency and the National Security Agency from the program. The Commission recommends changes in civil service regulations to allow the transfer of "loyal security risks" to nonsensitive positions or their dismissal under normal civil service procedures. The Commission recommends equal treatment on loyalty and suitability grounds for veterans and nonveterans in Federal employ. The Commission has also strongly urged that all departments of Government be treated alike and therefore the legislative and judicial branches should develop loyalty and security programs.

MILITARY PERSONNEL.—The Commission recommends that the standard and criteria for separation, for denial of enlistment, induction, appointment, or recall to active duty in the Armed Forces, including the Coast Guard, should be that on all the available information there is a reasonable doubt as to loyalty. The Commission recommends that the opportunity for a hearing presently afforded inductees rejected for security reasons be extended to enlistees who are rejected on loyalty grounds, if requested. The cost of such hearings should be borne by the Government and military counsel should be assigned, if requested. The recommendations in other programs for subpena and confrontation would also apply in the military personnel program. The Commission also recommends that in loyalty separations, the type of discharge given a serviceman should depend solely upon the conduct of such serviceman during the term of his military service, including the period of membership in the active or inactive reserve, and that, except to the extent that there has been falsification of his official papers, preservice conduct should not be considered in determining the type of discharge to be given.

DOCUMENT CLASSIFICATION.—The changes recommended by the Commission in the present program for classification of documents and other material are of major importance. The most important change is that the Confidential classification be abolished. The Commission is convinced that retention of this classification serves no useful purpose which could not be covered by the Top Secret or Secret classification. Since the recommendation is not retroactive, it eliminates the immediate task of declassifying material now classified Confidential. The Commission also recommends abolition of the requirement for a personnel security check for access to documents or material classified Confidential. The danger inherent in such access is not significant and the present clearance requirements afford no real security-clearance check.

The report of the Commission stresses the dangers to national security that arise out of overclassification of information which retards scientific and technological progress, and thus tend to deprive the country of the lead time that results from the free exchange of ideas and information.

ATOMIC ENERGY.—The Atomic Energy Commission is an employer of Federal civilian workers and also operates an industrial security program. In general, the Commission's recommendations are designed to bring both AEC's Federal civilian employee and its industrial security programs in line with the comprehensive programs planned for general application throughout the Government.

INDUSTRIAL SECURITY.—Uniformity of regulations, of procedures and their application, and of administration appeared as the needed goal of any reform of the present industrial security program. Therefore, the Commission recommends the establishment of a Central Security Office in the executive branch of the Government, as previously noted. With this arrangement, the hazards of consolidation of all industrial security programs into a single agency are avoided, but the benefits of a unified program will be available by means of a monitoring system exercised through such a central office. The Director of the Central Security Office will advise with the heads of the various government agencies as to issuance of uniform regulations, the interchangeability and transference of clearances from one agency to another, the adoption and use of uniform forms for applicants for clearance, and the provision for hearing officers to preside over hearings afforded applicants for clearance whose clearance has been denied or revoked.

To insure uniformity within the armed services with respect to the Department of Defense Industrial Security Programs, the Commission recommends establishment of an Office of Security within the Office of the Secretary of Defense. This office would integrate, control, and supervise the industrial security programs of the three services, thus eliminating duplicate clearances, investigations, fingerprinting and repetitious execution of clearance applicant and related forms, and accomplishing a streamlined administrative pattern eliminating delay resulting from use of chain-of-command communications regarding security matters. Classification guides would be issued by such office, and close scrutiny maintained on the classification of materials contracted for by the services. Downgrading and declassification programs would be monitored from this office, as well as disposition of classified material upon completion of contracts.

Confrontation and subpena powers are recommended as discussed in the Commission's general recommendations on that subject.

Replacement of the present security standard by a more practical and positively worded one is recommended, namely, that clearance for access to classified material should be denied or revoked if it is determined on the basis of all available information that "access to classified information and materials will endanger the common defense and security." Also, ambiguous

criteria relative to associations are omitted in the Commission's recommendation, and the test of refusal to testify at an authorized inquiry has been added.

PORT SECURITY.—The Commission's study revealed defects in the regulations and the operation of the port security program. The Commission therefore recommends that the Commandant of the Coast Guard be vested with full jurisdiction to administer the program with the exception that designated Army and Navy installations continue to be administered by the cognizant military authority. The Commission further recommends that clearances for port workers by the Coast Guard, Army, and Navy be interchangeable.

The Commission emphasizes the importance of administration by recommending that personnel of the Coast Guard assigned to duties in the security program be thoroughly trained in security matters and be assigned to duty in the program on a full-time basis.

One of the problems which has arisen in the administration of the security program by the Coast Guard has been the failure to give an applicant for clearance adequate notice of the reasons for a denial of clearance. The Commission recommends that in the future the applicant be given specific and detailed notice to the extent that the interests of national security permit. The Commission recommends that standards and criteria for clearance in the Coast Guard be uniform with the standards in other major security programs. The Commission also recommends that hearings heretofore conducted by the Coast Guard be the responsibility in the future, of the Central Security Office. Compliance with this recommendation will promote uniformity in standards and procedure throughout the Government.

AIR TRANSPORT SECURITY.—The Commission recommendations for a security program in civil air transport recognizes the need for initial Federal action at the industrywide level in this important field. At present, only the employees of CAA, CAB, or other Federal agencies involved in air transport are subject to the formal program, required under Executive Order 10450. The Commission has recommended, however, that only those employees actually in a position to do substantial damage should be included in the program.

The recommendation that CAB have final authority as to admission to "restricted" facilities under its jurisdiction reflects the opinion of the Commission that, when such authority is divided among CAA, CAB, and military agencies sharing civil air transport facilities, there is strong likelihood that overall national security interest cannot be adequately protected. The agency which has the responsibility for such protection should have sole authority for implementing measures for that protection. The Commission, however, recognizes the important dual interests of CAA and CAB in national security in civil air transport and recommends that, subject to other recommendations, the Secretary of Commerce and the CAB should have joint responsibility for airport security.

INTERNATIONAL ORGANIZATIONS.—The existing loyalty program for United States nationals employed by international organizations should be continued, but the standard should be broadened to include those who are security risks for reasons other than doubtful loyalty. The standard should be whether or not, on all the information, there is reasonable doubt as to the loyalty of the person to the Government of the United States or reasonable ground for believing the person might engage in subversive activities against the United States.

The Commission is recommending amplification of the criteria, reconstitution of the International Organizations Employees Loyalty Board and streamlining of its operations to minimize delays, and the rights of subpena and confrontation applicable to other programs.

PASSPORT SECURITY.—In the passport field, Congress should enact legislation defining the standards and criteria for a permanent passport security program. The procedures would continue to be defined by regulation.

Proposed amendments to the criminal statutes would make it unlawful for a United States citizen to travel to any country for which his passport is declared invalid, and would penalize willful refusal to surrender a passport lawfully revoked.

The Commission also recommends that the legal adviser of the Department of State determine the legal sufficiency of all passport denial cases before final action by the Secretary.

In the operational phase, the Commission recommends that, at all levels, there be strict compliance with the provision of the regulations that notice in writing and the reasons for decisions shall be stated as specifically as security considerations permit. An applicant would also be required to state whether, as the result of any security investigation or proceedings, he has been advised of an adverse finding. The Commission also proposes that a single fingerprint be required on the application and on the passport itself.

The Commission believes also that qualifications should be specified for Passport Office employees charged with responsibility for security decisions and that there should be a training program for such employees.

IMMIGRATION AND NATIONALITY.—The Commission recommends in the field of immigration and nationality that the functions of visa control, except for diplomatic and official visas, be transferred from the Department of State to the Department of Justice and that the Attorney General be authorized by law to maintain personnel abroad to carry out these functions.

The Commission also found that the admission to the United States of any large group of aliens en masse creates a serious security problem. It, accordingly, recommends (1) that the parole provision of the Immigration and Nationality Act of 1952 be amended to clarify with greater specificity the intent of Congress relative to its use, (2) that the status of refugees admitted under such emergency conditions not be changed until all have been adequately screened, and (3) that the Government sponsor an Americanization program for all refugees ultimately granted permanent status.

Overhauling of the deportation provisions of the Immigration and Nationality Act is also recommended to provide:

(1) suspension of the issuance of all but diplomatic and official visas and of the use of bonded transit by nationals of any country which refuses to accept a deportee who is a national, citizen, or subject of such country;

(2) detention at this discretion of the Attorney General of any alien against whom a final order of deportation is outstanding more than 6 months, if required to protect national security or public safety;

(3) greater specificity in the conditions under which deportable aliens will be subject to supervision; and

(4) authorization for the Attorney General to order a deportable alien to refrain from subversive activities or associations.

The Commission also recommends that, if the visa control function is shifted to the Department of Justice, the Immigration Service fix a definite date by which all alien crewmen will be required to have individual visas.

The Commission also urges that the provisions of the Act for fingerprinting and registration of aliens remain in force, and that an adequate training program be conducted for personnel engaged in the discharge of visa functions.

NEW LEGISLATION.—Two new substantive laws are recommended.

The first would penalize unlawful disclosures of classified information with knowledge of their classified character by persons outside as well as within the Government. In the past only disclosures by Government employees have been punishable.

The second recommended legislation would make admissible in a court of law evidence of subversion obtained by wiretapping by authorized Government investigative agencies. Wiretapping would be permissible only by specific authorization of the Attorney General, and only in investigations of particular crimes affecting the security of the Nation.

Note.—**The foregoing Summary of Recommendations is necessarily a brief and concise statement of conclusions. However, for a better understanding of the report, please note respective chapters which set forth a full discussion and rationale of each program briefed.**

Mr. TRACY. Now, the 18th National Convention of the Communist Party, I think, focused attention on what we are faced with. The speech of Gus Hall at that convention in New York, in June 1966, outlined that "The Party has started to grow, both in membership and influence," and he said, "We are a factor in the left stream of the mass currents of the country. The overall policies and tactical line projected by the Party have been sound."

It is interesting that the first meeting of the 18th National Convention was the only meeting at which they admitted members of the mass media. And they were instructed, the photographers were instructed to photograph only those who were on the platform.

Now, I think the record of Hall is well known to this committee. He has been a member of the party since 1920. He was convicted back in 1934 in connection with riots; he was prosecuted under the Smith Act and was apprehended after he escaped to Mexico. He was apprehended and was brought back to serve his sentence.

Now he is the leader today, just as he was in the early days. And when the meetings of the Communist Party, U.S.A., were terminated in 1959, the last meeting, he was the head of it then. They did not hold conventions again because of possible prosecutions, I gather, and he was, naturally, I think, and everyone expected it, reelected.

So we can expect continued activity of the party to disrupt the various movements in this country, every movement they can possibly get into.

The CHAIRMAN. And one of the prime, two of the prime targets are this committee and the agency which you were connected with in the past, the FBI; isn't that true?

Mr. TRACY. I think that is absolutely correct, and has been for many, many years.

Now, with reference to the experience of this committee at the San Francisco hearings several years ago, the International Association of Chiefs of Police published an article, the result of a very fine investigation into what happened at the time; and if that has not been introduced before this committee as a matter of record, I would like to ask that it be accepted at this time.

The CHAIRMAN. It will be received for the files. It is too long for the public print.

Mr. TRACY. In the *Security World* magazine there are three splendid articles, very short, which explain later activities.

The CHAIRMAN. Those will be received for the files.

Mr. TRACY. Now, I think, personally, I think it is tragic that educators and administrators in our colleges today permit spokesmen for the party, after the Supreme Court decision declaring it was an agent of a foreign principle, to speak on college campuses, without having another speaker on the same program to tell those students precisely what his public record is.

I don't think it is education unless students get both sides of the question.

The CHAIRMAN. You are absolutely right.

Mr. TRACY. Now, the Keyishian case in New York, which I gathered the members of this committee are quite familiar with, I think is quite disturbing. That was the one decided January 23, 1967. It concerned

four members of the faculty, each of whom had refused to sign certain affidavits or statements or forms.

Justice Clark, our former Attorney General, and most knowledgeable in this area, filed a dissenting opinion, and I would like to read just a couple of paragraphs of that dissenting opinion.

The CHAIRMAN. Now I have lost your trend. What did the majority ruling hold?

Mr. TRACY. The majority ruling held the Feinberg Law of New York was unconstitutional.

The CHAIRMAN. With reference to employment of Communists in the State educational system?

Mr. TRACY. Right.

The CHAIRMAN. Was it teachers, in that particular case?

Mr. TRACY. Yes. There were four; three were full-time faculty, and one employed in the library was part-time faculty.

The CHAIRMAN. And they held this State law to be unconstitutional?

Mr. TRACY. Right.

The CHAIRMAN. But Justice Clark dissented. Now will you read two paragraphs, from his dissent?

Mr. TRACY. His dissent, I think, is very illuminating and very, very pertinent.

> It is clear that the Feinberg Law, in which this Court found "no constitutional infirmity" in 1952, has been given its death blow today. * * * No court has ever reached out so far to destroy so much with so little.
>
> * * * * * * *
>
> The majority says that the Feinberg Law is bad because it has an "overbroad sweep." I regret to say—and I do so with deference—that the majority has by its broadside swept away one of our most precious rights, namely, the right of self-preservation. Our public educational system is the genius of our democracy. The minds of our youth are developed there and the character of that development will determine the future of our land. Indeed, our very existence depends upon it. The issue here is a very narrow one. It is not freedom of speech, freedom of thought, freedom of press, freedom of assembly, or of association, even in the Communist Party. It is simply this: May the State provide that one who, after a hearing with full judicial review, is found to have wilfully and deliberately advocated, advised, or taught that our Government should be overthrown by force or violence or other unlawful means; or to have wilfully and deliberately printed, published, etc., any book or paper that so advocated *and to have personally* advocated such doctrine himself; or to have wilfully and deliberately become a member of an organization that advocates such doctrine, is prima facie disqualified from teaching in its university? My answer, in keeping with all of our cases up until today, is "Yes"!
>
> I dissent.

I think that is a very pertinent comment in that particular decision. Justices Harlan, Stewart, and White joined with Justice Clark in the dissent, and the decision, I think, in this case makes it doubly important that the Internal Security Act of 1950 be amended along the lines of the bill before you now.

Mr. CULVER. Mr. Chairman, would the gentleman yield for a question?

Mr. TRACY. Surely.

Mr. CULVER. I wonder, Mr. Tracy, if you would draw a distinction between a State-employed university instructor who was found guilty of a factual situation, as suggested in this case, and that of a visiting lecturer to a university campus who espoused Communist views.

I was interested in your suggestion that you feel that this should not be permitted. I have always been of the persuasion that certainly at the university level, in a free society, that the student should be able to make a determination and a judgment individually as to how meritorious the advocacy of any position is. And it is fundamental.

The CHAIRMAN. I think his point——

Mr. CULVER. And I think it is fundamental also that our free society as suggested in the first amendment that we have a confidence in the marketplace of ideas, and an idea rises or falls on its merit in competition with other ideas.

And certainly, if we are all agreed that international communism represents the greatest threat to our own security, I think it is beholden upon us in a free society to know as much about it as we can.

Mr. TRACY. I am in full accord.

Mr. CULVER. So we can most effectively challenge.

Mr. TRACY. I am in full agreement with you.

Mr. CULVER. In the case of Mr. Carmichael, I think it has been very useful. He has been able to talk himself out, and I think the credibility of his position was much more persuasive before he talked too much.

In terms of his appeal to certain elements of our own society. So I am a little disturbed by this broadside arbitrary suggestion. I have more confidence, frankly, in the intellectual discrimination and sophistication of those products of a free society to make those judgments independently.

I think it is basic and fundamental, as an expression of the confidence of our own system and our own way of life.

And I think to fight fire with fire only means to trade one form of despotism for the other.

Mr. TRACY. My point was, I am in favor of all speakers, whether Nazi, Fascist, or Communist. I think our young people in our schools need to know. But they need to know both sides at the same time, the same audience.

Mr. CULVER. Is that essential? Are they incapable intellectually of carrying an argument in their head for an hour or for later or until they have an opportunity to discuss it with some of the other students, or until they have an opportunity to meet with other speakers on a regular basis, who very properly, and as far as I am concerned, desirably, are advocating an alternative way of life?

They get a pretty heavy diet of that.

Mr. TRACY. Let me give one example.

Gus Hall spoke to an audience of approximately 12,000 at the University of Oregon a few years ago. A conservative speaker spoke later, and the audience was 800. Now the students and others in that audience that heard Gus Hall did not hear what and who and why Gus Hall was and is, and I think they should get both sides of the question to the same audience, is my point. I have no objection to any speaker.

Mr. CULVER. Isn't life itself an educational trial?

Isn't it? You suggest to me today, for example, that the proper response to the problem of the urban ghettos is X. Now is it essential for me to make what might objectively be the right determination on what is the best response to have somebody else here advocating Z simultaneously with you?

Or do you think that I could carry some of that poison around with me for an hour, or for 24 hours, until I bump into Z and say, "Say, Z, I think the best response to the problem of the urban ghettos is X, and what do you think?"

And he said, "You are nuts, because," and all of a sudden I say to myself, "You know, Z makes a lot more sense than X."

I don't doubt that I have carried around stupid ideas for years, and there are members of this committee that wholeheartedly agree with that, but that happens to be what I think, and I respect their right to think what they think.

Mr. ICHORD. You can only think.

Mr. CULVER. And you can only think, and I think that the suggestion that I have got to be in some 1984 world where wham! I get it on the right cheek, and wham! I get it on the left cheek simultaneously, somehow that delicate brain of mine is going to get poisoned in the absence of simultaneous innoculation is absurd.

Mr. TRACY. Well, in our colleges, where our students are being educated, I think that is the one place——

Mr. CULVER. What is education? What is education?

Mr. TRACY. They should receive both sides at the same time. The same time.

Mr. CULVER. A shot in the right arm and a shot in the left, like the Army induction center physical line? What is educational experience?

Mr. TRACY. They should get both sides of the same question, the same students.

Mr. CULVER. At the same time, just like lining up for shots, going into the service.

Mr. TRACY. I think so, when you have a Supreme Court decision stating what the Communist Party is, and Gus Hall is its spokesman.

Mr. CULVER. They can read what the Supreme Court of the United States said, and I agree wholeheartedly with the majority.

Mr. TRACY. They don't. Our young people don't read the way we older folks do.

Mr. CULVER. Oh, I disagree with you. I have spoken to every one of the 82 high schools, parochial and public, in my district, and I can assure you that the questions among the young people in America are far more provocative and enlightened and intelligent than anything I ever encounter in adult service clubs.

I can assure you of that, without question. As far as reading more, students read 10 times as much.

Mr. TRACY. I think that is right, but——

Mr. CULVER. I think the trouble with most adults is that they start working for a living, they quit reading, and they just drift along with their prejudices the rest of the way.

I think it is about time we ventilated some of this, and talked, if we are really going to meet our problems. I disagree wholeheartedly with you that somehow, you get older, you get smarter. A lot of people get older and, regrettably, don't get one bit smarter.

Mr. TRACY. I still think our young people should have both sides in the schools.

Mr. CULVER. Well I am all for both sides. My problem was, based on your formulation, if they would ever get it.

Mr. TRACY. I think they would. In my opinion, they should have it at the same time.

Mr. ICHORD. Will the gentleman yield at that point?

Of course, Mr. Tracy, we are now in a field where students of free societies, both modern-day and ancient, insofar as they had them, have been very much confused and very disturbed.

How far do these individual freedoms extend? We have been disturbed ever since the beginning of the Nation about how far freedom of speech, freedom of press, and freedom of assembly extend.

But I wish to return specifically to the bill at hand.

This decision of the Supreme Court, you mentioned in your statement, held that a man could not be compelled to sign a certificate that he was not a Communist. I wonder if in this legislation we should have the sanction that was brought out earlier, in order to make the legislation effective?

Should we retain the provision that a mere finding of the SAC Board would preclude a man from employment, or should we, in order to be practical, to accomplish the objective in mind, go more over to what the chairman indicated, that we only have disclosure as such, and then let this finding have its own force, in order to inform members of the public?

What is your feeling on this? I do not think in light of this decision and others that the Supreme Court has passed down that it would hold that we could validly have a finding of the SAC Board preclude a member from Government employment.

Mr. TRACY. I think the chairman's views as expressed today are very, very pertinent, and I think that disclosure of membership in the party is very important. And sanctions and criminal penalties I don't think are important.

Mr. ICHORD. This is a very difficult field in which to legislate, and it is one in which sometimes so-called conservative lawyers will become liberal and so-called liberal lawyers will become conservative.

And here we have got to be careful in drawing this piece of legislation. It is very hard to use unambiguous language in dealing with the problem that we are attacking.

Mr. TRACY. I do think it would help very greatly if the Congress, in this bill and in any other bills involving the national security, made it clear that it is the intent of Congress that this be done. And I think that is one thing that has been missing in some of the bills in the past, failure to make the intent of Congress clear.

The CHAIRMAN. Well, I think that should be part of the report on the bill. I have always been opposed to "whereas" clauses in a bill. They are for contracts, and I don't think the Congress should be called upon to hold certain things to be sacrosanct and then proceed from that and legislate. So I don't agree with you in this respect. I don't know that we can do more than to say, in other words, that intent must be drawn by the courts from the words employed.

Mr. ICHORD. That is all you have.

The CHAIRMAN. That is all you can possibly do, but in the report, you can spell it out, and so if you have a problem in your mind as to

how to spell intent, I wish you would say it in short order, so that maybe I would favor putting it in the report, but I doubt that it would be appropriate in the bill.

Mr. TRACY. Well, I was thinking of the Nelson case, Mr. Chairman.

The CHAIRMAN. That old Nelson case about sedition?

Mr. TRACY. The Nelson case is where the Supreme Court said the Federal statutes touch a field in which the Federal interests are so dominant——

The CHAIRMAN. That is the preemption field.

Mr. TRACY. Yes. That the Federal system must be assumed to preclude enforcement of State laws.

The CHAIRMAN. Well, to be entirely honest about it, I think that is what the Constitution says.

The Constitution provides that this Constitution and the acts of Congress made pursuant to it shall be the law of the land, and both an act of Congress and the Constitution, when they conflict, the State law must yield. That is what the Constitution says.

I think what we should do—and the Judiciary Committee does that very frequently, did it in the riot bill and many other bills—is to say what is not the intent. It is not the intent of Congress that by entering into this portion of this field that State laws shall be struck down.

I think that should be in these bills, and that has been the policy of the Judiciary Committee.

Mr. TRACY. That is the point on intent that I think is important.

The CHAIRMAN. Is that the point you are making?

Then I agree with you.

Mr. TRACY. That is the point I am making, because the Supreme Court has specifically told the Congress it is assuming congressional intent.

The CHAIRMAN. I agree with you, and I agree with the Court, because that is what the Constitution says, but I fully approve that there should be language in the bill when it is deemed desirable that that bill, entering as far as it goes, shall not be deemed to strike and deaden and kill State laws.

I completely agree with you. But that should be in it.

By the way, I have been an advocate of that procedure for years and years, and the Judiciary Committee very, very, very frequently—here is Governor Tuck to support me—does that very thing. Is that right, Governor?

Mr. TUCK. I think that is right.

Mr. TRACY. Now the Federal Government is, for example, very active through the NLRB in the labor field. Does that mean that if a case went up, the Supreme Court might hold, because of the Federal interest, all State laws are out of date and unconstitutional?

I am concerned about this particular point.

The CHAIRMAN. The Nelson case has been the subject of litigation, I mean, of judicial, of legislative action three times, by the House.

We repealed that decision on the floor of the House three times, under the chairmanship of Judge Smith. But it died in the Senate. We did it three times, to override the Nelson case.

Now if you can straighten it out, it will accord with your views and my views, but we never were able to do it.

Mr. TUCK. We preclude abolishing preemption.

The CHAIRMAN. That is right.

Mr. TUCK. We have precluded the abolishment of preemption doctrine and the passage of a lot of legislation since then.

The CHAIRMAN. That is right.

Mr. TUCK. The bells have rung for a quorum, Mr. Chairman.

The CHAIRMAN. Yes, I am afraid they have. You are not going to be too long, are you?

Mr. TRACY. No, I am using my text here merely as a guide, but I think it is absolutely clear as you have stated, the responsibility for the security of the Nation is on the Congress and the President, and is not on the Supreme Court.

The responsibilities are here; therefore, intent or any other factor, I think, is the responsibility of the Congress to pass legislation, making it completely clear.

Mr. TUCK. Mr. Chairman, I would suggest that we recess until tomorrow.

The CHAIRMAN. Well, I think that is a good suggestion, because it comes to my observation, somebody tells me, and that is my guess, that yesterday there were seven quorum calls, and we are going to have some more, so if you don't mind, we will adjourn at this point until 2 o'clock, and then, Mr. Tracy, to complete your testimony, we would be glad to hear from you at 10 o'clock tomorrow morning.

How about that?

Mr. TRACY. That will be fine.

The CHAIRMAN. But we now stand adjourned until 2 o'clock this afternoon.

Mr. ASHBROOK. You are going to hear him tomorrow at 10.

The CHAIRMAN. I am sorry, we adjourn until 10 o'clock tomorrow morning.

Mr. TRACY. Right.

The CHAIRMAN. Wait. We have a witness for today. We do have an afternoon session. We have a scheduled meeting. I properly said 2 o'clock, because we were supposed to hear a witness that we scheduled at 2 o'clock.

So we will stand adjourned and recess until 2 o'clock, and then at that point, we have a scheduled witness, but we will be glad to hear from you for the balance of your testimony at 10 o'clock in the morning.

Mr. TRACY. Tomorrow morning, fine.

The CHAIRMAN. Yes.

(Whereupon, at 12:20 p.m., Wednesday, August 16, 1967, the committee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION, WEDNESDAY, AUGUST 16, 1967

(The committee reconvened a 2:10 p.m., Hon. Edwin E. Willis, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

STATEMENTS OF HON. HENRY C. SCHADEBERG, A U.S. REPRESENTATIVE FROM WISCONSIN; THE MILITARY ORDER OF THE WORLD WARS; AND THE NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION

The CHAIRMAN. Before proceeding with our next witness, the chairman wishes to make a part of the record at this time the following:

A statement of a former member of this committee, Henry C. Schadeberg; the position letter of the Military Order of the World Wars, favorable to these bills; and, also in favor of the bill, the letter from the National Woman's Christian Temperance Union.

These will be printed in the record.

(The statements follow:)

STATEMENT OF HON. HENRY C. SCHADEBERG, A U.S. REPRESENTATIVE FROM WISCONSIN

Mr. Chairman, I am happy to have an opportunity to join with my colleagues in urging this committee's support of legislation which I have cosponsored, designed to bring the Internal Security Act into conformity with current legislative practice and interpretation.

It is not necessary for me to detail my complete support of the Internal Security Act which is the principal legal tool available today in opposing subversion. As a former member of this outstanding committee, my views on this subject are a matter of record. I recognize, however, that, in order for the act to continue to be operative and effective, it will have to be amended.

In the light of the crises we are facing today in this Nation of ours, both internally and externally, it is imperative that the Internal Security Act be made as constitutionally taut as possible so that our Federal officers may carry out their duties with efficiency and dispatch. The conforming amendments in this legislation, endorsed by so many Members of this House, will buttress the act sufficiently to assure its continuing effectiveness.

I urge your early and favorable action on H.R. 10391.

Thank you very much.

STATEMENT OF THE MILITARY ORDER OF THE WORLD WARS

THE MILITARY ORDER OF THE WORLD WARS,
Washington, D.C., 14 August 1967.

The Honorable EDWIN E. WILLIS, M.C.
Chairman, House Committee on Un-American Activities
Rayburn Bldg.
Washington, D.C.

DEAR CONGRESSMAN WILLIS: I regret that other commitments will prevent me, as Commander-in-Chief of The Military Order of the World Wars, from appearing in person before the House Committee on Un-American Activities in connection with H.R. 10390 and allied bills. However, on behalf of this Order, I desire to go on record as assuring you that the legislation which you propose to amend and strengthen the Internal Security Act of 1950 has the unqualified endorsement of The Military Order of the World Wars.

I request that this communication be entered as part of the official records of your hearings.

Sincerely,

/s/ Louis J. Fortier
LOUIS J. FORTIER,
Brigadier General, USA Ret.
Commander-in-Chief.

LJF: ras

STATEMENT OF THE NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION

NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION,
Washington, D.C., August 15, 1967.

HOUSE UN-AMERICAN ACTIVITIES COMMITTEE
Hon. EDWIN E. WILLIS, *Chr*
Cannon Bldg
Washington, D.C.

DEAR SIR: I regret that it is not possible for me to attend the hearing of H.R. 10390, 10391 and H.R. 10681 but I would like this statement of support entered in the record of the proceedings.

I became particularly upset when I noted in the *Congressional Record* of August 2 (S 10783) of Senator Tydings desire to abolish the Subversive Activities Control Board. I am a resident of Maryland and Tydings is supposed to represent Maryland but he does NOT represent me.

I realize the Control Board has been victimized by petty politics and has been shorn of its major duties by the Supreme Court but I also understand that the above mentioned bills which are sponsored by an impressive list of Congressmen would right the situation.

I feel it is vitally necessary to have a reliable public register of the Communist-controlled or affiliated organizations.

H.R. 10390 and its companion bills conform to Supreme Court decisions and its passage would restore the effectiveness of the registration provisions which the Supreme Court took away.

It is very necessary that there is available somewhere a list of organizations and individuals which are Communist connected or engaged in subversive activities.

I am sure there are many organizations that need this information. As a free-lance writer I have found this list invaluable. As a civic and church worker I have found the list indispensable. It is amazing the propaganda that seeps into these places. Truly motivated Christians will stand up and insist that such and such an organization is Communist. Unless I had the actual list of Communist groups they would never believe me when I refute their statements. I firmly believe the Communists are doing as much (or nearly so) damage in maligning our truly patriotic organizations as they do in implanting their insidious propaganda.

I write the Washington Letter for the *Union Signal* (WCTU organ) and take every opportunity to introduce facts about subversive activities in the United States so as to alert our members to the other dangers in their midst. I frequently get inquiries from members, particularly in small towns USA who are astounded at these revelations. They want to know more. They want to know what they can do. I need to have facts to give them. If the Control Board is abolished and/or if these bills are not activated I will have no way of knowing the truth.

The amendments as indicated in these bills seem valid and are vitally necessary. Indeed I feel much valuable time has been lost because of the enforced inactivity of this Board.

I realize that it is extremely necessary that experts handle this job of assembling this information. If you will report them out of Committee with recommendations for favorable action we can hopefully get the Board back in business.

This seems particularly necessary in this time of unrest, riots and wholesale disturbances. We need to know who is doing what; we need to be able to point a finger at the offenders and need to have an authenticated yardstick to measure those who are guilty.

I beg that you expedite these bills all possible so as to restore the efficacy of the Internal Security Act of 1950; so that not only will top government authorities be able to identify those individuals and organizations and make their case stick in court but for me and countless other "little people" who are trying to maintain American ideals of this country where we live and work.

Most sincerely,

/s/ Mildred B. Harman
MILDRED B. HARMAN
Rep. Bureau of Legislation
National WCTU

STATEMENT OF HON. SPEEDY O. LONG, A U.S. REPRESENTATIVE FROM LOUISIANA

The CHAIRMAN. A colleague of ours, and from my own State, Speedy Long, was to be a witness, the first witness this morning. He could not appear because of reasons beyond his control. I now insert his statement in the record.

(Mr. Long's statement follows:)

STATEMENT BY HON. SPEEDY O. LONG, A U.S. REPRESENTATIVE FROM LOUISIANA

Mr. Chairman and Members of the Committee:

I am very pleased to be here today to speak in support of Mr. Willis' bill, H.R. 10390, which, incidentally, I was honored to associate myself with at its introduction.

Since the Supreme Court saw fit to hold unconstitutional certain elements of the Internal Security Act, relating to the compulsory registration of Communist-front organizations, I have felt that the Congress must act to shore up this area of our national security. H.R. 10390, I believe, effectively accomplishes this purpose.

I do not think it is necessary for me to go into the mechanics of the bill here today, because these can be explained to the committee far more efficiently by your staff and by the legal experts among your membership. I do think it proper that I express myself on the grave need for this legislation.

A person does not have to be a "Chicken Little" to recognize the grave danger of subversion by such groups as the Communist Party continuously spins off its main body. These front groups are virtually unrecognizable to the casual observer—that is, the majority of the population—which only increases their danger to the Republic.

H.R. 10390 is an admirable effort to establish a national policy and the machinery for dealing effectively with the front groups which harass the flanks of representative government. Its chief virtue is that it unmasks the subversive group and casts the light of justice upon its Communist connections and direction. Invariably, when discovered, such organizations shrink and quickly disappear.

The fact that they very often reappear in another guise soon after is only more reason to establish this law, for vigilance is still the price of freedom.

Mr. Chairman, permit me to urge most strenuously the committee's support and passage of H.R. 10390 and call upon the Congress to enact this critical legislation. I firmly believe that I can rest in the sure knowledge that this committee, and hopefully the Congress, shall do its duty by the people of this Nation.

Thank you, Mr. Chairman.

The CHAIRMAN. Our first witness this afternoon will be Mr. Marvin Karpatkin of the American Civil Liberties Union.

Let us defer for just a minute.

Sir, do you have a prepared statement?

Mr. KARPATKIN. Mr. Chairman, I regret I do not. I was only invited to testify in the last few days, and it was insufficient time to prepare a statement.[1]

The CHAIRMAN. All right.

Mr. KARPATKIN. May I proceed, Mr. Chairman?

The CHAIRMAN. Yes.

---

[1] The director of the ACLU Washington office had requested in June 1967 that he be notified when hearings were to be held on H.R. 10390 and H.R. 10391 so that he could appear and present testimony. His office was accordingly notified when the date of the hearings was definitely set. The Washington ACLU office, in the absence of its director, made arrangements for Mr. Karpatkin to testify in his place. Mr. Karpatkin was not invited to testify by the committee.

STATEMENT OF MARVIN KARPATKIN, FOR THE AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY MARK GINSBURG [1]

Mr. KARPATKIN. Thank you, Mr. Chairman.

I am appearing here at the request of the American Civil Liberties Union. I have the honor of being a member of the national board of directors of that association.

The ACLU will soon be celebrating its 50th birthday. The organization consists of more than 100,000 Americans with affiliates in, I believe, 43 of the States and with chapters in many of the States.

The sole aim and function of the American Civil Liberties Union is to exist as a voluntary organization of Americans dedicated to preserving and furthering and maintaining the constitutional freedoms and liberties of Americans under the Constitution and laws of the United States.

I might personally say that I am an attorney in private practice in the city of New York. I am a graduate of Yale Law School and I have a master of laws degree from Yale.

I wrote amicus curiae briefs in a number of cases in the Supreme Court of the United States, including several dealing with the constitutionality of the Internal Security Act of 1950.

I would also very much like the record to show, sir, as a point of personal privilege, that I started my legal career as an assistant to the Honorable Thurgood Marshall, when he was chief counsel for the National Association for the Advancement of Colored People.

Since that time, I have been in private practice.

I should like to say, Mr. Chairman, that I am certainly most appreciative of the personal courtesy in letting me appear, particularly the courtesy extended to me in letting me appear in the afternoon when it was originally requested that I appear in the morning. I am deeply appreciative of that. I must, however, add that it is my professional responsibility and duty to state for the record that in the view of my organization, a view which I certainly share, the existing statute is unconstitutional in a number of respects, and we do not feel that any of the constitutional problems will in any way be lessened by any of the proposed amendments.

I will go into the consideration of each of the amendments seriatim.

I think that candor also requires me to say that the American Civil Liberties Union has for many years called for the abolition of the Internal Security Act of 1950, the repeal of the act, and the American Civil Liberties Union has likewise called for many, many years for the abolition of this committee.

With all respect for Congress and for the chairman and members of the committee, we feel that under the first amendment of the Constitution there is no proper legislative function that can be performed——

The CHAIRMAN. Can you cite a case that holds that?

Mr. KARPATKIN. I believe the case of *Watkins* v. *United States*, 354 U.S. 178 (1957).

The CHAIRMAN. It certainly does not. That is not my understanding of the Watkins case.

---

[1] Mark Ginsburg, a third-year student at Harvard Law School and law interne, summer 1967, was assigned to the Washington office of the ACLU by the Law Students Civil Rights Research Counsel.

The Watkins case held only that the pertinency of the question to the subject matter of the hearing must be adequately explained to the witness. That is all that case held, and that the committee has always tried to do when asked by a witness. And, as a matter of fact, in that decision four Justices found that the relevance of the contested questions had been adequately explained to Mr. Watkins.

Mr. KARPATKIN. Mr. Chairman, I would be delighted to give you my views and the views of my organization concerning the Committee on Un-American Activities. I believe that you will find, Mr. Chairman, language in the Watkins case which says virtually verbatim, "There is no right to expose for exposure's sake."

The CHAIRMAN. The Court did not hold that we were doing it. It said it would be wrong if we did it. Isn't that right?

Mr. KARPATKIN. We are both lawyers, and I certainly would not wish to suggest that my evaluation of the law is superior to that of the distinguished chairman of this committee.

The CHAIRMAN. That is a reading of fact. It is a fact that the Court did what we would consider to be *obiter dictum*, said that it is wrong to expose for the sake of exposure, as an abstract proposition, to which I completely subscribe.

But did the Court accuse the committee as a whole that it had done that? Please answer that "yes" or "no."

Mr. KARPATKIN. Mr. Chairman, I do not believe that question can be answered "yes" or "no," but I believe it could be answered more "yes" than "no."

I believe that the Court was clearly suggesting that at least insofar as the investigation of the witness in that case was concerned, there was at least a tendency to indulge in exposure for exposure's sake.

The CHAIRMAN. Why didn't the Court say so?

Mr. KARPATKIN. It was a narrow majority of the Court, and in cases subsequently majorities of the Court have tended to make determinations concerning the work of this committee on much narrower grounds.

The strongest statement is in the Watkins case. In other cases the Court has nullified convictions on other than constitutional grounds and other than free speech grounds.

The CHAIRMAN. That I concede, that on narrow questions of procedure it has so held. But talking about the Watkins case, I am telling you that it is my opinion it did not hold and did not even say that this committee was guilty of exposing for the sake of exposure, but suggested for any committee to do it, including this committee, would be wrong.

Isn't that the statement?

Mr. KARPATKIN. Mr. Chairman, may I be presumptuous enough——

The CHAIRMAN. I see no point in this.

Mr. CULVER. Mr. Chairman, I wonder if it is not appropriate to remind the witness that we are here today to consider the merits of specific legislation, and I do not think the constitutional construction of a court case or indeed the constitutionality of the existence of this committee is revelant to this purpose.

We are all very busy. We are extremely interested to have your statement and we respect your views, and I for one would very much prefer you to address yourself to that question.

Mr. KARPATKIN. Mr. Congressman, I will proceed to that immediately. I think now in the interests of candor, I would——

Mr. CULVER. I think the members of the committee are familiar with your organization.

Mr. KARPATKIN. I think it is relevant to give a bit of background of the history of this statute and the decisions of the Supreme Court and other courts which have brought forth the legislative proposals which are before this committee today.

As I am sure the members of the committee know, in only one decision has the Supreme Court of the United States held any portion of the Internal Security Act of 1950 to be constitutional.

The CHAIRMAN. Isn't the reverse true, that it has indicated only that section 6 dealing with passports is unconstitutional?

All right, name me a case that held any other section or any other sentence in the act to be unconstitutiontal except the one dealing with passports.

Mr. KARPATKIN. I would like, Mr. Chairman——

The CHAIRMAN. You would like to, but you cannot?

Mr. KARPATKIN. I would like to develop my testimony as I had it prepared, but I would be delighted to answer your question.

I believe in the case of *Albertson and Proctor* against the *Subversive Activities Control Board* [382 U.S. 70 (1965)] which, according to the *Congressional Record*, the chairman says he agrees with, the Supreme Court held that certain individual registration provisions of the statute——

The CHAIRMAN. I agree that the Supreme Court held that no one could be compelled to register and to sign that he is a Communist, and I said that I agree with that decision.

But it didn't hold the section unconstitutional. It simply held—after having held in 1961 that the act itself was within the powers of Congress and was a valid act, so far as disclosure proceedings are concerned—then in 1965, in implementing or in carrying out the details of the act, it held that *if* a witness invoked the fifth amendment against an order to register himself as a Communist, the order could not be enforced because it would, in effect, be compelling him to testify against himself, and I agree with that decision.

Mr. KARPATKIN. That was a unanimous decision, with Mr. Justice Clark pointing out in his concurring opinion that he had warned against it when he was Attorney General under President Truman.

If the Court stated that a certain provision cannot be constitutionally operative, it seems to me that is equivalent to a holding of unconstitutionality. I don't think we need to quibble. We both agree with the decision and we both know what it means.

What I wish to point out is concerning the basic requirement of the statute, the requirement of registration of allegedly Communist-action——

The CHAIRMAN. And this present bill does not so require. We deliberately, with our eyes wide open, cautiously respected the decision in the case referred to on that very point.

Mr. KARPATKIN. Mr. Chairman, I am quite aware of that. My point is that the holding of constitutionality in *Communist Party* v. *Subversive Activities Control Board*, in the 1961 decision, that 115-page

decision by Mr. Justice Frankfurter, which you and I have read many times, a 5 to 4 decision, Mr. Justice Frankfurter makes it very clear in his analysis of the statute, in his analysis of the legislative history, in his discussions of the findings of necessity, of the definitions and of the criteria, that we are only talking about one thing now, he says, we are only talking about the registration of the Communist Party, per se, we are not talking about self-incrimination, we are not talking about——

The CHAIRMAN. You mean in upholding its constitutionality?

Mr. KARPATKIN. Yes.

The CHAIRMAN. I understand that.

Mr. KARPATKIN. He made it very clear.

The CHAIRMAN. He made it clear and left the door open for a proper hoding in a later case that to compel someone to register was improper if he invoked his fifth amendment rights. I agree with the holding. If I had been a judge, I would have held the same way.

Mr. KARPATKIN. I would hope, Mr. Chairman, that you would have voted with the dissenters and provided a fifth vote, because our opinion is the stronger argument is with the four who dissented, that the act violates the first amendment in a number of respects.

The CHAIRMAN. In what respects?

Mr. KARPATKIN. I think it can be stated most succinctly in the words which Mr. Justice Black used, not in his lengthy dissent back in 1961, but in 1965, in the case involving the so-called Communist-front organization, where Mr. Justice Black said:

> I think that among other things the Act is a bill of attainder; that it imposes cruel, unusual and savage punishments for thought, speech, writing, petition and assembly; and that it stigmatizes people for their beliefs, associations and views about politics, law, and government. The Act has borrowed the worst features of old laws intended to put shackles on the minds and bodies of men, to make them confess to crime, to make them miserable while in this country, and to make it a crime even to attempt to get out of it. It is difficult to find laws more thought-stifling than this one even in countries considered the most benighted. * * *

What I have just read for the record is from Mr. Justice Black's dissenting opinion in the case of *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board.*

The CHAIRMAN. I am glad you mentioned Justice Black, because it is significant that only one of the dissenting Justices, and that is Black, took the position that the act is violative of the first amendment. Is that true?

Mr. KARPATKIN. That is true, but——

The CHAIRMAN. If it is true, let's not say, "It is true, but"—Proceed.

Mr. KARPATKIN. We think Justice Black is a very authoritative interpreter of the meaning of the first amendment, Mr. Chairman.

I think it is a melancholy fact—this thought was suggested by Mr. Justice Black, saying that this statute reminds us of the most benighted countries with thought-stifling laws.

I think it is a melancholy fact that the totalitarian dictatorship running the Government of Argentina at this time has recently proposed legislation to ban certain organizations, purportedly for the purpose of fighting communism in that country, and it has stated it has adopted as its guide the Internal Security Act of 1950.

The press has never carried the verbatim text of the Argentine law, and I have not read it. But it is a thought that Americans can consider, that one of the most totalitarian countries in this hemisphere has to borrow a law from the United States.

Mr. Chairman, the point that I was trying to make from the narrow decision by Mr. Justice Frankfurter, and I am not going into self-incrimination now, but into the basic first amendment argument, is that the constitutionality was narrowly sustained in terms only of the Communist Party of the United States, because of the fact that a Communist-action organization was intimately related, or at least held to be intimately related, with aspects of foreign affairs involving direct efforts and threats at the violent overthrow of the Government and the substitution of a totalitarian government in its stead.

By very definition, the findings, the legislative history, the definitions and the criteria do not make the same accusations with respect to so-called Communist-front organizations.

All that is said with respect to so-called Communist-front organizations is that they "aid" or "support" and similar words.

The CHAIRMAN. I think I am going to urge the objection of my colleague to my right, that you should address your opinions to the business at hand.

I take it you are against the legislation at hand?

Mr. KARPATKIN. Yes, Mr. Chairman.

May I point out that in the per curiam decision of the Court in the case of American Committee for the Protection of Foreign Born, it is pointed out:

> Our *Communist Party* decision on the Communist-action provisions did not necessarily foreclose petitioner's constitutional questions bearing on the Communist-front provisions. * * *

The CHAIRMAN. I don't contend that. Did I say any word——

Mr. KARPATKIN. I am not suggesting that you did, Mr. Chairman. This is addressed to the argument of unconstitutionality, which we are making, directed toward section 1——

The CHAIRMAN. You are just arguing your case like you would before a court. Although you don't like this committee you must realize, as a lawyer, that this is not a court, and this committee, by the way, today is not exercising its investigative powers, but its bill-hearing powers; so I wish you would address yourself to the question at hand.

Mr. KARPATKIN. I am sure of that, but I am sure a committee manned by as many able lawyers——

The CHAIRMAN. Please don't pay us a compliment that will overwhelm us. I am liable to fall off my chair.

Mr. CULVER. May I have the citation in the last case you made reference to?

Mr. KARPATKIN. Yes, that is from page 2 of the slipsheet opinion. I will get you the United States Report citation shortly. [It is 380 U.S. 503 (1965).] It is at that point that the Court drops a footnote and cites President Truman's veto message, and certain provisions of it.

The CHAIRMAN. Is that outfit still existing, American Committee for Protection of Foreign Born? That is one of the oldest cited front organizations in America.

Mr. KARPATKIN. Mr. Chairman, I would not have the slightest idea whether it is existing or not.

The CHAIRMAN. I am told it is. All right.

Mr. KARPATKIN. Mr. Chairman, section 1, I am addressing myself now to H.R. 10390, the bill which is before this committee. Section 1 expands the definition of Communist-front organization to include "substantially directed, dominated, or controlled by one or more members of a Communist-action organization."

The previous definition was "substantially directed, dominated, or controlled by a Communist-action organization."

I take it that the purport of the amendment is to allow for a situation of control where it is not by an organization but by one or more members thereof.

The CHAIRMAN. That is the nub of it all, and you heard previous witnesses agreeing with its desirability.

Mr. KARPATKIN. Unfortunately, I did not have the privilege of being here to hear previous witnesses, but I would assume from published statements that some of the witnesses would have indicated that they were in favor of this amendment.

We are opposed to it for the primary reason that we believe that there is no constitutional power to proscribe Communist-front organizations of any kind, whether by this definition or by any other definition.

We believe that the Court, when it next acts, is going to redeem the hint which it gave in that one sentence which I read from the American Committee case and rule that while by a 5 to 4 vote it found constitutional power for Congress to act against the Communist Party of the United States because it is intimately tied up with a foreign-dominated military conspiracy——

The CHAIRMAN. Do you agree with that statement you just made there?

Mr. KARPATKIN. Mr. Chairman, my personal views as to events in world history are really of no relevance whatsoever.

The CHAIRMAN. I am glad you want to hew the line of admissibility. Proceed.

Mr. KARPATKIN. Very good, Mr. Chairman. I try not to hew to any line. I try to develop my thoughts as they come along and as I feel they are relevant.

It seems to me that it must be acknowledged that there are certain limits to congressional power in the area of the first amendment. There must be some point beyond which the constitutional power to restrict the free speech of Communist-action revolutionaries, which is presumably the reason the Court gave its approval 5 to 4 in the 1961 case, cannot be stretched. This cannot be a limitless power subject only to any determination which the Board might make with any organization.

There are many persons, unfortunately, in Government as well as out of Government, who would include a large number of organizations such as, for example, the Socialist Party or the National Association for the Advancement of Colored People or Women's Strike for Peace or the Americans for Democratic Action or our own organization, the American Civil Liberties Union—there are unfortunately

many persons who would say these organizations should be included in the rubric of Communist-front organizations——

The CHAIRMAN. You have not heard me say that, have you?

Mr. KARPATKIN. No, I have not, and I wish you wouldn't take my remarks personally, if you are.

The CHAIRMAN. What does it have to do with the materiality of the case?

Mr. KARPATKIN. I think it does. There is a grave danger, while the act allows the stigmatizing of so-called Communist-front organizations, that many organizations which have liberal views are going to be threatened.

The CHAIRMAN. Are you in favor of the front organizations——

Mr. KARPATKIN. Am I in favor of front organizations?

The CHAIRMAN.—dominated or controlled by Communists?

Mr. KARPATKIN. Mr. Chairman, I am in favor of the first amendment, and I am in favor of the greatest freedom of the exchange of ideas, even by organizations that call for radical changes in American society, as long as these radical changes are called for in terms of advocacy and not overt acts.

I hope that answers your question, Mr. Chairman.

The CHAIRMAN. It does not, but proceed.

Mr. KARPATKIN. I think, however, that in addition to the general objection, the general constitutional objection, there is a further objection to the amendment in section 1.

If the statute were to be amended so as to provide——

Mr. CULVER. Excuse me. Are you back on section 1 now?

Mr. KARPATKIN. Yes.

Mr. CULVER. Have you completed your testimony with regard to section 2?

Mr. KARPATKIN. I don't believe I have gone into section 2, Mr. Culver.

Mr. CULVER. I am sorry. I thought you were addressing section 2.

Mr. KARPATKIN. Do we have the same print? I am talking about H.R. 10390. I am talking about section 1, which would expand the definition of Communist-front organizations.

Mr. CULVER. Fine.

Mr. KARPATKIN. According to this definition, the Board would be free to brand any organization as a Communist-front organization if it were determined that it was substantially dominated, directed, or controlled by even a single person who was a member of a Communist-action organization.

There are many scientific congresses, many international organizations, where scholars, learned persons, scientists, humanities experts from our country come in contact with persons of similar scholarly specialization from Communist-dominated countries.

Many of these organizations have persons from Communist countries on their executive boards as part of the international scientific intercourse. Indeed I would suppose that in some of these organizations there is a provision for the rotation of chairmanship, so that it might very well be that at some international congress on microbiology or geophysics, or whatever, the president or the director-general or the secretary or what-have-you in any one year——

The CHAIRMAN. I think you are forgetting the last part of the definition has the disjunctive "or" in two instances, then it winds up under (C), "and is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement * * *."

You have got to prove that, too.

Mr. KARPATKIN. I take it, Mr. Chairman, that you agree with me that there might be a problem with that portion of the definition which I have just been criticizing. At least I would hope that you agree with it.

The CHAIRMAN. I have agreed with you more often than you have agreed with me.

Mr. CULVER. Mr. Chairman, certainly the witness is much too good an attorney to say that because you establish a defect in part it is all tainted. You read the whole relevant section of the statute in law. It has no real basic legal objection, does it?

Do you feel the imperfection permeates the entire language of the statute?

Mr. KARPATKIN. While I could generally agree with you, Mr. Congressman, it seems to me that a person concerned with constitutional liberties should——

Mr. CULVER. In your hypothetical that you pose, which I think is most interesting and a useful one, my only concern is whether it is—whether it has any relevancy to any objection you see in this statute.

I cannot even envision a situation where the case you pose is likely to be at all affected by a proper interpretation of the language as drafted.

Mr. KARPATKIN. Assume that some American organization of scholars or otherwise decides in its best interest that it should affiliate with some international organization, and assume that in any particular year the majority of the members of the executive of that international organization come from so-called neutralist or Communist countries, so that there is a balance that is not pro-American in one particular year.

Mr. CULVER. Can we further assume for the illegality under the statute that it is primarily operated to give aid to a Communist foreign government or the world Communist movement referred to in section 2?

Mr. KARPATKIN. I would assume that the members of this committee and most persons would probably agree that persons who represent——

Mr. CULVER. Can you answer the question?

Mr. KARPATKIN. I don't think that this is altogether fanciful, Mr. Chairman. I can easily conceive of something like that occurring.

Mr. CULVER. Fanciful that they are operated for the purpose——

Mr. KARPATKIN. I can conceive of that accusation being made.

Mr. CULVER. Lawsuits can be brought of the most fanciful nature, but suing the bishop's daughter, as we all are familiar with in first year law, is one thing. To make it establish in court the elements of crime is quite another.

Mr. KARPATKIN. We didn't learn about it. Maybe it has been so long since I was in first-year law school I don't remember the bishop's daughter.

It seems to me you have to read the words of the statute and give a reasonable interpretation of what it may mean.

Mr. CULVER. I couldn't agree more. I am in full accord with that statement. A reasonable interpretation of what it means, one, and secondly, read it all.

Mr. KARPATKIN. That is right.

Mr. CULVER. Perhaps we are both——

Mr. KARPATKIN. This is in answer to the question you asked previously, Mr. Culver, that any element of unconstitutionality in the statute should not cause us to say that we should try to weigh it and see if it is not outbalanced by the other elements that are not constitutional.

The CHAIRMAN. Are you suggesting that if a court holds that one section or one facet of the statute is unconstitutional that necessarily the others are tainted to the point where they can be claimed to be unconstitutional?

Mr. KARPATKIN. No, Mr. Chairman. There is a legal rule, a rule of construction, to deal with this. This is a rule of whether the clauses are dependent or independent, separable or nonseparable, and in each case the statute would be studied to determine——

The CHAIRMAN. This is a conjunctive clause I have been reading.

Mr. KARPATKIN. Yes, Mr. Chairman.

Mr. CULVER. A statute in part may well be viewed as unconstitutional, without additional language or qualification that certainly could be defective, but I think it is essential if we are going to make that observation that it be made in total and complete construction of the reading of the statute in context.

Mr. KARPATKIN. Mr. Culver, let me follow this with you, if I may.

Assume an international organization of agricultural experts which makes a determination that in one particular year a special team is to be sent to study the problems of agriculture in Communist Yugoslavia. It seems to me that it can be contended that the requirements of the statute can be met in that particular year—assume for example that it was outvoted, that there were suggestions for India——

Mr. CULVER. Is that your suggestion? Could it be said that this particular organization, then, as an organization, is primarily being operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement?

Mr. KARPATKIN. In that particular year when the control of the organization made that determination over presumably the minority votes of the American members, or even if they didn't vote——

Mr. CULVER. Totally independent of that. We could have American members who were Communists.

I think that is the key question to address ourselves to, and also I think, as far as the statutory authority of this Congress, we can only address ourselves to the activities of native American groups.

Mr. KARPATKIN. Yes, but I believe the activities of the native American groups——

Mr. CULVER. Would that be characterized as a native American group, the international organization you suggest, or would it be chartered? Probably it would be an international authority, wouldn't it?

Mr. KARPATKIN. If you will finish your questions, I will answer them. Shall I wait, or try to answer them all together?

Mr. CULVER. Whatever you find most convenient.

Mr. KARPATKIN. You are the Member of Congress. Ask me the questions, and I will try to answer them.

The CHAIRMAN. Are you construing this bill as being applicable to international organizations?

Mr. KARPATKIN. I think this bill is applicable to an American organization which may engage in any act, temporary or permanent, of affiliation with an international organization.

The CHAIRMAN. And whose primary purpose is to give aid and support to a Communist-action organization, a Communist foreign government, or the Communist world movement. Is that what you are talking about?

Mr. KARPATKIN. That is exactly what I am talking about, Mr. Chairman.

The CHAIRMAN. You mean that international organization, an international organization is formed for that purpose, but American nationals belong to it?

Mr. KARPATKIN. I believe it says primarily, "operated," Mr. Chairman. It does not say "organized." "Operated for the purpose of giving aid and support."

I believe, Mr. Chairman, that I can see a petition being drawn stating that——

The CHAIRMAN. If you draw it, you could conceive quite a lot of things. I know that. But you wouldn't draft that petition.

Mr. KARPATKIN. Mr. Chairman, I hope it would never be necessary to draft that petition, because I hope this committee will not favorably report out this proposal, and if it is favorably reported out, I hope, with all respect, it will not receive the support of the House.

The CHAIRMAN. It received the support of the Senate full Judiciary Committee; you know that.

Mr. KARPATKIN. Yes.

The CHAIRMAN. Did you appear there?

Mr. KARPATKIN. No, Mr. Chairman, I did not. I certainly would have liked to though.

Mr. ASHBROOK. Go back to what you wanted to say. You were making a point.

The CHAIRMAN. You felt that this act applied to international organizations to which American nationals belonged. That is the question, I think.

Mr. KARPATKIN. The answer is, Mr. Chairman, that the act applies to American organizations.

The CHAIRMAN. Then your answer to my question is "no"?

Mr. KARPATKIN. I think that is correct. My answer to your question is "no," but I think in further explanation it should be pointed out that what we are talking about now is a definition: What is the definition of this organization? And what I am criticizing is an attempt to introduce as a new element of this definition the fact that this organization of Americans might be substantially dominated, directed, or controlled by even one person who was a member of a Communist-action organization. I am saying that this can be implemented within the

words of this proposed amendment, so as to proscribe a group of American scientific experts who affiliate with an international organization, where an international organization makes a determination that is in accord with either the foreign policy or the domestic policy of any Communist government. I gave as an example the sending an agricultural team to Yugoslavia rather than sending it to India, assuming that there is a divided vote on that, and that the majority of persons representing Communist organizations swings the votes and they allocate the money to send the agricultural team to help agriculture in Communist Yugoslavia.

Mr. ASHBROOK. Could I ask you a question, an (a), (b) question?

Is this, (a), a question where you think nothing should be done, or, (b), you think it is an area where something should be done, but you disagree with this?

Mr. KARPATKIN. Mr. Congressman, the ACLU is unalterably opposed to the statute.

Mr. ASHBROOK. But is this an area where you think something should be done?

Mr. KARPATKIN. This is an area where we felt there was adequate legislation before the Internal Security Act, and we are against it for constitutional grounds, essentially, sir.

If a distinction has to be made, it can be made between the holding of constitutionality insofar as requiring the registration of the Communist Party as a Communist-action organization with foreign involvements, and any kind of actions with regard to so-called Communist-front organizations, which the Supreme Court has not ruled on, and which the only thing the Supreme Court said is a hint that it might be unconstitutional in a per curiam opinion in the American Committee for Protection of Foreign Born case in 1965.

I started off my argument by saying we are against everything that has to do with CFO's, Communist-front organizations, but assuming it exists in the statute, we believe that greater dangers of the guilt by association and greater dangers of harming Americans by reason of their associations can result——

The CHAIRMAN. And the illustration you give to prove that guilt by association is that one or more American nationals might join an international organization of some kind?

Mr. KARPATKIN. There are many ways in which it could happen, Mr. Chairman. One or more American nationals might join an international, or an American group might affiliate with an international organization as a whole. That is another way in which it might happen.

Mr. CULVER. In a report in the 87th Congress, it defines the term "Communist-action organization" as "any organization in the United States."

Now, certainly, I could envision a situation where an international organization were formed and operated on a charter within the United States for some of the purposes you suggest, but I think it is important to give proper acknowledgement of the language of the statute which does require ruling out "primarily operated for the purpose of giving aid and support"——

Mr. KARPATKIN. If you will be kind enough to read the language a bit further, it says that a Communist-front organization by definition

is an organization which has a certain relationship with either a Communist-action organization or a Communist foreign government or the world Communist movement.

Mr. CULVER. You are reading where now?

Mr. KARPATKIN. From the language in the existing statute.

Mr. CULVER. Subsection (C)?

Mr. KARPATKIN. Yes. And that is in the 1950 act and we still have it today.

I think we are getting close to the limits of what Mr. Justice Frankfurter for a majority of five held to be constitutional power.

It said here we are dealing with something foreign, with military force, with what happened in Hungary, with a situation where it is not just ideas. But once we move away from that hard core, we are involved with ideas.

I am not saying the Supreme Court said it; it did not, it specifically held it open.

What it said on it was in 1965, per curiam, in the American Committee case, it went out of its way to say that the constitutional questions were open for an appropriate case.

Mr. ASHBROOK. One point is that where the group assumes the mask of anonymity to conceal its operations, Congress has the right to remove that mask.

I hate to quote someone else's words back, but I think you said you were against everything that has to do with CFO's.

Are you opposed to any legislation of that kind?

Mr. KARPATKIN. Yes, I am. I would suppose that any organization, a so-called "front" or otherwise, which engages in overt acts is certainly subject to legislative regulation in the interests of internal and external security of this country.

Mr. ASHBROOK. I am glad you said that because what you said before indicated that your organization was against any legislation.

Mr. KARPATKIN. Our organization distinguishes between acts and advocacy. Even the most perfervid advocacy is protected.

Mr. ASHBROOK. What about concealment? Do you think they have the right to conceal purposes?

Mr. KARPATKIN. The genesis of this language is some of the words of Mr. Justice Frankfurter in his 115-page opinion.

Mr. ASHBROOK. This is a very important thing. The mask of anonymity which many groups seek to conceal, particularly CFO's, as you have referred to, how about legislating in this area?

Mr. KARPATKIN. I think Mr. Justice Frankfurter was very clear to say that we are talking about only a Communist-action organization, and nothing else.

He said there is enough on the other side of the balance to outweigh it.

Mr. ASHBROOK. Are you saying that a Communist-front organization has to find itself in a different category and therefore legislation should not be proposed in that area?

Mr. KARPATKIN. I believe what the Court said in *American Communications Association* v. *Douds* [339 U.S. 382 (1949)]. Mr. Justice Jackson said that he could not conceive of any constitutional justification which would require Democrats or Republicans or Socialists to wear armbands. But he added that the Communist Party is different.

In *Sweezy* v. *New Hampshire* [354 U.S. 234 (1957)]——

The CHAIRMAN. In what way different?

Mr. KARPATKIN. According to a five-man majority of the Supreme Court——

The CHAIRMAN. I have said this time and again, and I said it in my opening statement, and you are correct in what you are saying there, that if the Communists were required to put a bandage on and to have labels on their package of deceit, labeling it as communism, Americans won't buy it. Basically, a front organization is basically deceitful. Isn't that true?

Mr. KARPATKIN. I'm not so sure, Mr. Chairman. I'm not so sure.

The CHAIRMAN. It is fronting——

Mr. KARPATKIN. Mr. Chairman, I know about one of the so-called front organizations, because I did the amicus curiae brief for the Veterans of the Abraham Lincoln Brigade, and I read a good deal about the Spanish civil war, including the book written by Mr. Thomas, the English historian, which received such good reviews.

There is a question in the minds of scholars as to the extent of Communist domination, of the Communists in those activities. Certainly there was participation, but domination, that is the problem when you get into front organizations.

Mr. ASHBROOK. Are you willing to take the next step and say it is our legitimate concern as Congress to try to determine, difficult though it may be, to determine the ground rules for determining the extent? I admit it is difficult.

Mr. KARPATKIN. I think that is around the bend, as the English say. I think that is beyond the legislative power of the Congress of the United States.

Mr. ASHBROOK. It may be beyond our ability, but not beyond our power.

Mr. KARPATKIN. I am sure it is within your ability, but I think it is beyond your power under the first amendment.

Thank you for being so kind in letting me take this much time.

The CHAIRMAN. You mean you are still in the introductory part?

Mr. KARPATKIN. By the way, if my voice is loud, forgive me. I have a cold which is affecting my ear, and I cannot tell how loud I am speaking.

The CHAIRMAN. You are doing all right.

Mr. KARPATKIN. Thank you.

Section 2 of the bill and also section 5(c)(1) and 5(c)(2), all deal with what is obviously something of great concern to the chairman, the problem of self-incrimination, which was raised by the unanimous decision of the Supreme Court in the Albertson case, and the proposals here are three in number, to provide for—I say substantively three in number, since there may be other technical things—to provide for a procedure for individual registration, for registration of individual members.

The CHAIRMAN. Not by the members themselves.

Mr. KARPATKIN. I understand that, to provide adversary proceedings for the registration of individual members. Is that a fair statement of it, Mr. Chairman?

The CHAIRMAN. Yes, it is.

Mr. KARPATKIN. It provides for registration of members of CAO's, as well as CFO's and CIO's, too, I suppose. I should say for the record we are talking about Communist-action organizations and Communist-front organizations and Communist-infiltrated organizations, CAO's, CFO's, and CIO's, respectively, and it provides immunity from prosecution of persons subpenaed to be witnesses.

I take it those are the essential provisions of the attempt to react to the decision of the Supreme Court in the Albertson case.

With all due respect, I suggest that the self-incrimination problem will still remain.

Self-incrimination, as I understand it, from reading *Counselman* v. *Hitchcock* [142 U.S. 547 (1892)], and the Albertson case and other decisions on the fifth amendment, and Dean Griswold's book, *The Fifth Amendment*, written about 10 years ago, is any kind of pressure, constraint, sanction, or compulsion which causes an individual to either indirectly or directly provide testimony which can be used to subject him to a criminal sanction or a civil forfeiture.

The CHAIRMAN. Criminal action or civil forfeiture?

Mr. KARPATKIN. Yes. To go further, I know that in the State of New York, and in many other States, a person in a matrimonial proceeding does not have to answer a question involving adultery. So I suppose it would involve civil sanctions as well as criminal sanctions.

The scheme of the amended statute, I suggest, would have the effect of attempting to do indirectly that which the Supreme Court said you can't do directly.

How? A person would presumably be the recipient of a notice or a subpena or some invitation or request or advice of the fact that a petition has been filed to have this person register in an adversary proceeding as a member of an organization. This person would have the choice of either responding affirmatively, responding negatively, or of not appearing.

Decisions which this person would make to respond or not to respond and how to respond, obviously must be made bearing in mind the very real possibility of incrimination precisely as indicated by the Supreme Court in the Albertson case.

There is the same possibility that this person, if he gives testimony, can be subjected to a sanction by providing a link of evidence to find him guilty of violating the membership provision of the Smith Act or criminal provisions of the Internal Security Act. By not testifying he can be subjected to sanction by allowing himself to be branded or stigmatized as a member of an organization because the consequences of opposing such possible stigmatization would have been to provide links of testimony against himself.

I think this comes well within the many decisions of the courts on self-incrimination that say when you give the person this kind of choice, the choice of avoiding penalty A by accepting penalty B, there is still self-incrimination.

I am sure the chairman would agree if he were here.

The bible of immunity cases is the Supreme Court case of *Counselman* v. *Hitchcock* some years ago, and it makes it very clear that for an offer of immunity, for a provision of immunity to be effective—remember that the immunity was held to be ineffective in the Albertson

case—in order for it to be effective, it must be as broad and all-embracing as to cover any possible sanction to which the person to whom immunity is granted is subjected.

I would like to find you the exact words from the Albertson case, because I think they were very instructive.

Mr. CULVER. Is this Albertson?

Mr. KARPATKIN. Yes, *Albertson*, 382 U.S. 70. It is a quote from *Counselman* contained in the *Albertson* case:

"that no [immunity] statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege . . ," and that such a statute is valid only if it supplies "a complete protection from all the perils against which the constitutional prohibition was designed to guard . . ." by affording "absolute immunity against future prosecution for the offence to which the question relates." * * * [382 U.S., at 80.]

The Court went on and it said that not just immunity from prosecution, but even the use of an admission as an investigatory lead to a prosecution must be guarded against.

Mr. CULVER. Of that individual? The investigative lead——

Mr. KARPATKIN. The language of the Court is—the Court held that the previous immunity provision was ineffective because, "it does not preclude the use of the admission as an investigatory lead."

It did not go into the refinement of that question which you are suggesting, whether it could be an investigatory lead against others.

Unfortunately, I think the Court has made clear in other cases that the privilege is personal and he cannot protect others unless he can show there is a relationship that would involve him in the incrimination of another.

Mr. ASHBROOK. Could you tell us how this provision falls within your objection?

Mr. KARPATKIN. Yes. I think this provision does not track the language of the Supreme Court decision under which it would have to be broader. This provision does not make clear that information obtained in such a proceeding could not be used in such an investigatory lead. But, Mr. Ashbrook, I can well understand you or the distinguished chairman saying to me, "Well, you are quibbling. We can redraft to make it stronger."

Mr. ASHBROOK. That type of quibbling makes a good court case.

Mr. KARPATKIN. I know that. If this could not be made a constitutional argument in deciding constitutional cases—we argue good and bad policy here, too—it seems to me the very purpose for which the self-incrimination purpose was intended, as Dean Griswold points out in his book, is to protect not only against sanction, but against public disgrace and infamy, to protect against a person degrading himself and making himself an object of ridicule before his fellows.

Mr. ASHBROOK. To interrupt on that point. Do you take the position in a pure hypothetical case that no provision by statute can really be proper, constitutionally—an immunity statute?

Mr. KARPATKIN. I don't know whether my organization has taken a position on it.

Mr. ASHBROOK. You seem to be saying it. It would be hard to give immunity, an immunity statute that wouldn't entail that.

Mr. KARPATKIN. That is a good question, if you will forgive my presumption in saying so.

I would say that within the area of any inquiry as to beliefs, associations, ideas, or as to advocacy, that this type of immunity is improper and contrary to the spirit of the protection against self-incrimination which we have inherited from Anglo-American law.

Mr. CULVER. How about treason?

Mr. KARPATKIN. Treason is a crime defined in the Constitution, the only crime I know defined in the Constitution. I believe it requires two witnesses to the same overt act, and I believe it is defined as the levying of war against the United States or giving aid and comfort to the enemy in time of war, and the same overt act must be testified to by two witnesses.

Now, are you, sir, asking me how I would feel about a statute which would be designed to give immunity to one person who could be such a witness?

Well, Mr. Chairman, I haven't thought about it, and I will say that I am open on it. I can see considerations on both sides. We are certainly not calling for the repeal of the constitutional prohibition of treason, nor——

Mr. CULVER. I was interested in probing a little further how persuasive and sweeping you wanted to stand on the suggestion that you would insulate, without exception, the whole area of belief, thoughts, and so forth.

I just wondered whether or not it wouldn't be worthy of additional pause and reflection.

Would you include any immunity situation in this admittedly delicate and sensitive area?

Mr. KARPATKIN. I don't think that we have had any bad constitutional experiences with the treason clause.

Mr. CULVER. It is quite an academic and esoteric exercise——

Mr. KARPATKIN. Since the treason clause can be invoked only on the declaration of war, I hope and pray there will never be any——

Mr. CULVER. Could you answer my question?

Mr. KARPATKIN. My organization has said every time it has testified in opposition to this law and other loyalty-security legislation that we think the law's punishing treason and espionage and sabotage are fine. They fulfill a purpose. They did so in World War I and World War II——

Mr. CULVER. Whether there is a purpose or not, it certainly doesn't negate your sensibilities or sensitivity to encroachment upon fifth amendment privileges.

Mr. ASHBROOK. I would like to hear what he was going to say.

Mr. KARPATKIN. Of course not, and one of the reasons for our basic antipathy to this legislation is that we feel the only thing that can be encroached by congressional power is overt acts, and we already have laws enough to deal with any and all overt acts.

That is essentially what I was saying. I was going to use this occasion as an opportunity to go back into that area, which the chairman told me at the beginning I shouldn't concentrate on.

Mr. ASHBROOK. But setting up a Communist front is an act, and actions they take can be overt. It is not always speeches and pam-

phlets. Many times they call for specific acts, blocking a troop train, and dozens of things.

Mr. KARPATKIN. In that case, the blocking of the train is the act that is punishable.

The CHAIRMAN. Yet, the Pool bill which deals with that very problem, you opposed it.

Mr. KARPATKIN. I haven't read the Pool bill, Mr. Chairman——

The CHAIRMAN. It said blocking a train supplying material to our Armed Forces, a train or plane or ship supplying material to our Armed Forces in Vietnam—you opposed that bill.

Mr. KARPATKIN. I have enough confidence in whoever had the honor of testifying for my organization to feel that he was consistent with the policies and purposes of the American Civil Liberties Union.

The CHAIRMAN. You usually are against this committee, or 100 percent against, but now and again when the Court does sustain the constitutionality of a sensitive act of Congress, you take the Court to task, don't you?

Did you not take the Court to task when they upheld the contitutionality of this very statute we are talking about?

Mr. KARPATKIN. Of course we did, Mr. Chairman; we submitted an amicus curiae brief against it and we think the Court will change, and the majority will change.

Once upon a time racial discrimination was legal in this country, racially segregated schools were legal.

Once upon a time Jehovah's Witnesses' children could be expelled from public school, and perhaps even sent to jail because their religion wouldn't allow them to salute the flag.

You are not suggesting that there is any impropriety in our stating that we are dissatisfied with a Supreme Court decision?

The CHAIRMAN. Not at all. I have exprssed myself and our positions on decisions, too.

Mr. KARPATKIN. I am sure you have. [Laughter.]

I am sure we can all agree, Mr. Chairman, that this expression of our position should be temperate.

Mr. ASHBROOK. Even that is hard sometimes.

Mr. KARPATKIN. Yes, that is hard sometimes, I suppose.

The CHAIRMAN. What, if any, security laws has ACLU ever testified in favor of?

Mr. KARPATKIN. I have just finished saying in response——

The CHAIRMAN. You said you were for the statutes that provided for overt acts.

Mr. KARPATKIN. Yes.

The CHAIRMAN. Does the Smith Act provide for overt acts?

Mr. KARPATKIN. Mr. Chairman, in our view, the Smith Act is essentially a punishment of advocacy.

The CHAIRMAN. No, because it requires advocacy of force and violence——

Mr. KARPATKIN. But it is still advocacy, isn't it, Mr. Chairman?

The CHAIRMAN. What?

Mr. KARPATKIN. It is still advocacy.

We feel there is time enough, Mr. Chairman, that there is time

enough when a clear and present danger is reached, and we feel that the Smith Act allows——

The CHAIRMAN. Is not conspiracy an overt act?

Mr. KARPATKIN. Sometimes it is and sometimes it is not, Mr. Chairman.

The CHAIRMAN. I must say I do not agree. It seems to me I agree with you a number of times, and you have yet to agree with me on any problem.

Mr. KARPATKIN. I think I have agreed with you. I think we agree we should all be glad the Supreme Court decided the Albertson case the way it did. That is one area where we agree.

If I can move on, gentlemen——

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. KARPATKIN. If I may address myself now to section 4, this amends section 10 of the statute, so as to include a requirement of a statement of Communist auspices to accompany an oral solicitation and presumably to fill a gap which was caused by the present statute, which applies to printed material and which applies to oral statements which are electronically or by broadcast means transmitted, but does not include, presumably, a solicitation made at a public speech.

Well, of course we are opposed to this for the same reasons that we are opposed to all the other requirements about this kind of labeling.

The CHAIRMAN. I understand that, and I think that should really be sufficient.

Mr. KARPATKIN. Yes, but I have something extra to say here which you might be interested in, Mr. Chairman. Here we run into special problems of fairness and of procedural due process.

Every lawyer knows that there is a difference between libel, a written defamation, and slander, an oral defamation. The proof required for slander is always greater. The per se doctrine which exists, exists in the libel and slander laws of most States, is to protect against the possibility of injustices being done because of the difficulty of remembering and transmitting and recording in court what somebody is supposed to have said on a certain occasion as compared to what somebody is supposed to have written, of which there is a record.

I can conceive of injustices being done, where a person's oral statement is subjected to sanction. What will be the question of proof before the Board? Who said what? And when? And who heard him say it?

There is a difference between an inflammatory pamphlet and something which somebody has said—did he make a statement, or did he not make a statement, and who heard him, and so forth?

It seems to me there are serious due process problems here.

Section 5(a), if I may move on——

The CHAIRMAN. You certainly may.

Mr. KARPATKIN. I take it here the purpose is to deal with the Labor Youth League case.

The CHAIRMAN. That is right.

Mr. KARPATKIN. We agree on a number of things, Mr. Chairman. We agree on the legislative history.

The purpose here is to create a register of dissolved organizations.

I respectfully suggest, Mr. Chairman, that this can produce the ex-

traordinary procedure in American law of determination of guilt without hearing. One can say in response that it is not criminal guilt and there isn't any criminal sanction, and also no requirement of annual report. But nevertheless it is a determination that Organization A, B, or C, which was dissolved after the filing of the petition, was a Communist-front organization, and by definition, since the organization dissolved, there may not be any person who can testify to rebut any possibility of error which may have been made.

Perhaps all of the testimony was by informers, by the same kind of informer testimony which caused the Supreme Court to send the Communist Party case back twice.

Yet this kind of determination of guilt without a hearing would be brought into American law for what might well be the first time.

Mr. ASHBROOK. If the people are still alive, are you saying they couldn't——

Mr. KARPATKIN. This places upon them the burden.

The CHAIRMAN. Did they all die?

Mr. KARPATKIN. "Didn't they all die"?

The CHAIRMAN. Did they?

Mr. KARPATKIN. I don't know, Mr. Chairman, but since the Labor Youth League was an organization of young people, I would assume they didn't all die.

The CHAIRMAN. Why wouldn't they be available, then?

Mr. KARPATKIN. What I am suggesting is that this provision of the statute as I read it allows for a determination to be made without a hearing, because of the fact that the organization has been dissolved. There may be no one who was qualified to speak for it.

The organization may have dissolved in a great big ideological split. There are many kinds of ideological splits and bifurcations in the area of the left and radical left. There may have been some great big "bruhaha" at the end, and the organization dissolves in a lot of noise: and yet there is a determination subsequently made that this was a Communist-front organization and there is no person who has the right to come forward and say, "This is what happened at the last convention," because others might say, "I was there and it happened otherwise."

There is a real possibility of determination of guilt without a hearing.

Mr. ASHBROOK. But fundamental to all justice and rule of evidence, we don't operate in the courtroom or anywhere on the basis of every single piece of evidence that might come in.

No prosecutor ever presents his case, or defense lawyer presents his case—it is on what is available and what can be achieved. Justice would never be——

Mr. KARPATKIN. Yes, but, Mr. Ashbrook, if the organization is dissolved, it has no spokesman. Its funds have been liquidated, its property has been liquidated, and it has no organizational entity.

Mr. ASHBROOK. But that is no different than the crime being over, and you try to bring the facts out with the witnesses that you have.

Mr. KARPATKIN. I am glad you agree, because we feel the stigma here is similar to the stigma of a crime. There is no provision in American law of which I am aware for finding a person guilty in absentia. That happens in the Congo, perhaps, but not in the United States.

If I can move on to section 5(d)(2), which makes two amendments, and this is the last comment I will make before a conclusory peroration, if the chairman will allow me. Section 5(d)(2) amends sections 13(d)(3) and 13(d)(4). Section 13(d)(3) is amended so as to make it a crime to "misbehave" before the Subversive Activities Control Board, or before any examiner of that Board.

I should think, with all due respect to you, Mr. Chairman, that after all that the Supreme Court has said with respect to the vagueness of certain types of statutes, in the loyalty oath cases and other cases, I would have thought it would be impossible for any careful lawyer to try to make a crime out of "misbehavior."

What does "misbehavior" mean?

Does it mean I violate the smoking rule or spill some water on the table or I don't speak loud enough or I speak too loud?

Misbehavior in the presence of the Board is made a crime.

If it means overt acts of misbehavior, it is unnecessary. I suppose if I would pick up this pitcher of water and throw it at a member of the committee I would be guilty of assault and——

The CHAIRMAN. Are you familiar with the fact that in the code, in the question of contempt before the court, the word "misbehavior" is used?

Mr. ASHBROOK. I think that is the only word used in title 18.

The CHAIRMAN. Contumacious conduct.

Mr. KARPATKIN. We know what contumacious conduct is. We don't know what misbehavior is.

The CHAIRMAN. I do not think so. I think there are certain norms about appearance in a courtroom and how one should conduct himself and present himself if he is a lawyer, and how the jury should react in that box.

I think misbehavior is not a bad term at all.

Mr. KARPATKIN. Mr. Chairman, I am not a betting man, but I would like to make a small wager that no appellate court, whichever gets to see the word "misbehavior" in this context, would not rule that it is void for vagueness.

In a context where it is linked to contumacious conduct in the presence of a court, that would be something else.

The CHAIRMAN. If the type of misbehavior is such as inadvertently smoking or spilling water, or something of that nature, I doubt that any reasonable and self-respecting lawyer for the Government would present such a claim for prosecution under any statute.

Mr. KARPATKIN. I would hope not, Mr. Chairman, but the incumbents of various Government positions——

The CHAIRMAN. Let us not go into the improbable.

Mr. KARPATKIN. The last amendment, Mr. Chairman.

The CHAIRMAN. I cannot stay here past 3:30, and I hope you won't say I shut you up.

Mr. KARPATKIN. No, Mr. Chairman, you have been extremely courteous to me. I appreciate it.

The last amendment is an attempt to eliminate judicial review of nonfinal Board action. I suggest that it is in part unconstitutional.

It is in part unconstitutional because I don't think you can take away from an American court or from an American citizen the right

to have immediate redress when there is an irreparable constitutional injury.

This Congress, of course, sets the jurisdiction of Federal courts and can expand it or contract it, but it cannot take away from Federal courts the right and duty to protect a citizen who is subject to immediate or irreparable injury under the Constitution.

Assume, for example, that Congress would pass a law allowing condemnation and confiscation of property by an administrative agency and not allow judicial review until it has gone through the administrative process.

I would say the statute that set that up, that a Federal court would say, Nonsense, the constitutional right not to have property taken without just compensation would be abridged.

The CHAIRMAN. I am inclined to agree with you. May we pause now?

Mr. KARPATKIN. If I may conclude, Mr. Chairman, I think—I am sure that this suggestion is not going to fall on welcome ears, but I am going to make it anyway.

We have had the Internal Security Act for 17 years. In 1950 it reflected the tensions and the trepidations of that era, the period of Korea, when the Communist movement was monolithic , had its headquarters in Moscow under the totalitarian regime of Stalin.

The world is much more complicated now, and different. There is no longer a monolithic Communist world. Indeed, if anything, the seat of major security concern has shifted from Moscow to Peking.

The satellites are no longer satellites in the same sense of the word. There are differences which our foreign policy seeks to encourage and to expand and to develop.

Mr. Justice Frankfurter in that same decision allowed for the possibility that the time may come when there is no longer a single Communist totalitarian dictatorship.

We have many problems, foreign and domestic. I don't think any of the problems we have faced in the last 17 years have been seriously faced up to by this statute.

I think the greatest contribution this committee could make, a contribution which would truly be a statesmanlike one, and would assure that the present members of this committee would be remembered in constitutional history, would be not to recommend any amendments to the statute, but would be to recommend that the entire statute be repealed.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much for your appearance.

Mr. CULVER. May I also take this opportunity to thank the witness for his very useful remarks. I am sure they will be considered by the committee.

The CHAIRMAN. The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:30 p.m., Wednesday, August 16, 1967, the committee recessed, to reconvene, Thursday, August 17, 1967, at 10 a.m.)

HEARINGS RELATING TO H.R. 10390, H.R. 10391, AND H.R. 10681, AMENDING THE INTERNAL SECURITY ACT OF 1950

THURSDAY, AUGUST 17, 1967

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The committee met at 10:10 a.m., pursuant to recess, in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana, chairman; William M. Tuck, of Virginia; Joe R. Pool, of Texas; Richard H. Ichord, of Missouri; Del Clawson, of California; and Richard L. Roudebush, of Indiana.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

The CHAIRMAN. The committee will come to order. Mr. Tracy was in the course of completing his testimony yesterday. Will you come forward, Mr. Tracy? I understand that you are just about concluding your statement.

Mr. TRACY. Yes, sir.

The CHAIRMAN. May I remind you this: this is no direction, but the House is going into session at 11 this morning, and we have quite a few witnesses to hear, so will you get on with the meat of your presentation?

Mr. TRACY. Right, sir.

STATEMENT OF STANLEY J. TRACY—Resumed

The CHAIRMAN. Mr. Tracy, before you proceed, did you hear the representative of the American Civil Liberties Union yesterday? Were you in the room when he testified yesterday?

Mr. TRACY. No, sir. I heard Dr. Morris and I heard the Subversive Activities Control Board Chairman.

The CHAIRMAN. I am talking about the opposition witness, ACLU. You did not hear him?

Mr. TRACY. No, sir; I was not here.

The CHAIRMAN. Well, he harangued a bit about this bill, which was to be expected. It did not surprise me. It was par for his particular course, in my opinion. But that does not influence you; you are still for this bill wholeheartedly then?

Mr. TRACY. Very strongly.

ADDITIONAL STATEMENT OF JOHN W. MAHAN, CHAIRMAN, SUBVERSIVE ACTIVITIES CONTROL BOARD

The CHAIRMAN. Okay. By the way, let me say, Mr. Tracy, yesterday Mr. Mahan, the Chairman of the Subversive Activities Control Board, testified in person, but I received this morning an official letter of the Board itself, and so at this point, I will insert the Board's letter, official endorsement of the bill.

(The document referred to follows:)

SUBVERSIVE ACTIVITIES CONTROL BOARD,
Washington, D.C., August 16, 1967.

Honorable EDWIN E. WILLIS,
Chairman,
Committee on Un-American Activities,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN WILLIS: You have requested our views on H.R. 10390 and H.R. 10391, identical bills to amend certain provisions of the Internal Security Act of 1950. Court decisions which have interpreted some of the provisions of the Act and have ruled upon the constitutionality of other provisions make amendments necessary, in our view, in order to effectuate the national policy as declared by the Congress in the Act.

Section 1 of the bills apparently is designed to alleviate the problems which could arise as the result of the interpretation of the definition of a Communist-front organization as made in the opinion of the Court of Appeals in National Council of American-Soviet Friendship, Inc. v. Subversive Activities Control Board, 322 F. 2d 375 (D.C. Cir., 1963). The section would ease difficulties with which the Board has been faced in reaching conclusions of fact in cases involving allegedly Communist-front organizations. As to matters of evidence and proof under the section, those involved in presenting evidence before the Board are better able to comment on that aspect.

Our attorneys believe that section 2 of the bills would provide a means for the disclosure of members of Communist-action organizations without the constitutional infirmities found to exist in the present scheme by the Supreme Court in its opinion in William Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965).

Compulsory self-registration by members of "action-organizations" is eliminated in the bills by the rewriting of section 8. However, the bills retain the present section 7 and the provisions of section 13 for the registration of "action" and "front" organizations pursuant to orders of the Board. We are aware that the bills eliminate criminal penalties for the failure of organizations to register. Our attorneys think that the proposed approach remains of doubtful constitutionality under the Supreme Court's opinion in the Albertson case and the opinion of the Court of Appeals in Communist Party of the United States v. United States (Nos. 19,880 and 19,881, D.C. Cir., March 3, 1967). For these reasons we suggest that the same approach be taken for the disclosure of Communist organizations as is taken in the bills with respect to members of "action" organizations.

If such approach is taken, we would suggest the addition of a section 9 to the bills to authorize the Board to modify previously issued registration orders so as to conform to the new provisions.

Other provisions of the bills involve primarily matters of policy. The members of the Board respectfully refrain from commenting on policy matters. We do not see any substantial problems in carrying out such of those provisions as apply to proceedings before the Board.

The Bureau of the Budget has advised by telephone on August 15, 1967, that the time factor does not permit the Bureau giving its clearance on the views contained in this letter.

Sincerely,

/s/ John W. Mahan
JOHN W. MAHAN, *Chairman.*

STATEMENT OF STANLEY J. TRACY—Resumed

The CHAIRMAN. Proceed, Mr. Tracy.

Mr. TRACY. I think it is vitally important——

The CHAIRMAN. Mr. Tracy, for the audience, will you identify yourself again?

Mr. TRACY. Stanley J. Tracy, associate counsel of the Commission on Government Security, 1956–57.

The CHAIRMAN. And you were formerly with the FBI?

Mr. TRACY. Yes, sir; I retired from the FBI as Assistant Director in 1954.

The CHAIRMAN. And you were with the FBI for how long?

Mr. TRACY. Over 20 years.

The CHAIRMAN. Thank you very much. Proceed.

Mr. TRACY. Mr. Chairman and Members of the Committee, I feel that it is vitally important that the Internal Security Act of 1950 be amended because of the 18th Congress of the Communist Party last year. It is going—and the stated purposes are, it is going to move into the civil rights movement, and it already has.

Mr. CHAIRMAN. Is that an official policy declaration?

Mr. TRACY. Official policy declaration.

The CHAIRMAN. Would you have something in writing about that?

Mr. TRACY. Yes, sir; I have the citation in my text. It is a statement by Gus Hall, the secretary, general secretary of the party.

The CHAIRMAN. Didn't they also decide to move in the political arena and to have candidates for public office, too?

Mr. TRACY. Well, in his official statement to infiltrate and influence civil rights organizations.

The CHAIRMAN. You mean, are those words in there?

Mr. TRACY. Those words are in a statement filed with the Senate last year, as to the precise motives of the party, and you have it complete.

The CHAIRMAN. You mean, out of the lips of Gus Hall?

Mr. TRACY. No; those were not his precise words.

The CHAIRMAN. That was the characterization of the Senate?

Mr. TRACY. Pardon?

The CHAIRMAN. Was that the characterization of the Senate?

Mr. TRACY. That was the characterization of it.

This committee has, I believe, Hall's official statement, which would be supplementary to this.

The CHAIRMAN. We do, and it will be considered.

Mr. TRACY. And that the party's views that the New Left is a fertile field for party exploitation and that in the New Left protest demonstrations and hostility to our Government lie potential recruits. In other words, it is the considered opinion of those who know what the party is doing that they are going to get behind every movement they can get into to cause demonstrations and unrest and chaos and civil disobedience.

The CHAIRMAN. Well, I might say that this committee has under consideration the question of what and to what extent, if any, have subversive elements been at play in connection with these riots that have plagued our Nation in the last couple of years.

Mr. TRACY. I hope that this committee can get to the bottom of that.

The CHAIRMAN. And by subversive elements, I mean something much broader than communism. Because there are certain activities conducted by certain groups that I certainly, as chairman, would not characterize as communistic, but certainly subversive.

I gave this illustration yesterday, let me repeat it. This committee, by direction of the House, undertook a full-fledged investigation of the Ku Klux Klan.

Now I never found, and there is not a word of testimony to justify a hint or holding or finding that the KKK is dominated or controlled or infiltrated by the Communists.

That would be a rank injustice to them, whatever they are or might be. However, this committee found, and I personally am convinced, that they are subversive in the sense that they are subverting and they don't conform to our way of government, so a subversive element is something very much broader than the ultimate, such as a Communist, meaning.

Mr. TRACY. I agree, sir, and I think the Nazi movement and the Muslim movement fall in that same identical category.

The CHAIRMAN. I might tell you, sir, that at the same time that I was directed by the committee before the full-fledged KKK investigation—personally, I was ordered to make a preliminary inquiry into the activities of the Black Muslims, and the Rockwell tribe.

Mr. TRACY. That is the Nazi group.

The CHAIRMAN. I made a report to the committee and I advised against holding hearings or giving Brother Rockwell a forum to vent his spleen. What he would want would be for this committee to dignify him with a hearing, so that he could see himself in the press, and perhaps on TV some of these days.

And the same, I think, goes for the Minutemen. I personally, maybe it is too strong a characterization but I have a belief, a deep-rooted belief, because I conducted the preliminary inquiry myself, that the Minutemen is sort of a little racket by the man by the name of DePugh. I have had correspondence with former and present Minutemen to show that DePugh would like to get some more money.

He is hurting for members. He is hurting for money, just like Rockwell, and I personally would not dignify the Minutemen with a full-fledged investigation. They are not worth it in my book.

Would you disagree with that?

Mr. TRACY. I would not disagree with that.

The CHAIRMAN. In other words, I hate to give these birds a forum. That is what they want most—publicity. It was different with the KKK, because they certainly meant business, I abhor, I detest Rockwell's activities, but he is not a threat to this country. I might say this, in the investigation and preliminary inquiry, at no time, if I recall, has Rockwell had more than 85 members, at the peak of his power, so-called.

Mr. TRACY. I agree, sir.

The CHAIRMAN. Thank you.

Mr. TRACY. I would like to call to the attention of the committee a statement made by retired Lt. General Arthur G. Trudeau before a Senate subcommittee of the Committee on the Judiciary, in which he said:

I wish to make an unequivocal statement that the demonstrators in the streets of the cities of the United States are a force in direct support of the Vietcong killing our troops in Viet Nam; and the leaders are taking orders and being supplied from the identical high command—the Central Committee of the Communist Party of the U.S.S.R. I am sure many demonstrators are unaware of this situation.

Now the full text of General Trudeau's remarks will be found in part 7 of the hearings before the Senate Subcommittee To Investigate the Administration of the Internal Security Act and Other Internal Security Laws.

The CHAIRMAN. And those hearings are available to us.

Mr. TRACY. Yes, sir. It seems to me, gentlemen, that with the unrest in the world, that the Nazi threat in Germany was pretty well taken care of, and the Facist threat in Italy was pretty well taken care of, but international communism, the Soviet communism, has not been.

This country has been involved around the world, helping countries, foreign aid, the Korean situation and the Vietnam situation, and yet the Communist threat, international communism, has continued to grow around the world.

And personally I feel that the grassroots of America is not receiving enough information, and I certainly hope that the Congress would triple or quadruple the appropriation of this committee so it can get more information out to the American public.

The CHAIRMAN. Well, I appreciate your saying that, because we have our problems. You see, every year, and she is not in the audience today, but she was in the audience day before yesterday, distributing literature in this room—oh, is she with us? Mrs. Allen, and she is the official registered lobbyist of the national committee to abolish this committee, and they yackety-yak about this committee depriving them of liberty and freedom of the press, and they come—and freedom of movement and freedom of speech and all the rest.

And Mrs. Allen, I asked you yesterday if you cared to take the witness stand and tell us what you think about this bill. You are still welcome to do it after this witness.

Mrs. ALLEN. Professor Vern Countryman has written an analysis of the bill which we have available, and it was that that I gave to the press, and I did not pass it out to anyone, not a single soul. I gave it to the press only, and it was nothing about this committee whatsoever.

The CHAIRMAN. In other words, you want to be nice and quiet, so you gave it to the press. Is that right?

Mrs. ALLEN. It is available to the press in any case.

Mr. ICHORD. Mr. Chairman, is Mrs. Allen going to appear before the committee?

The CHAIRMAN. I invited her to appear yesterday, I am inviting her right now.

Mrs. ALLEN. No, thank you.

The CHAIRMAN. That is all right.

Mr. TRACY. I submit, Mr. Chairman, that under our form of government, Congress has the full and complete responsibility as its elected representatives. It is not the responsibility of the Supreme Court, nor of the executive branch. It is here. And therefore the American public should be informed from the Congress. And this

committee, I feel, needs a much bigger appropriation in order to reach more people.

The CHAIRMAN. I started to say that every year we have a troika attack: first, they try to abolish the committee; then, number two, they try to kill our appropriations, and then deprive us of money which is to operate with; and then, third, they try to transfer our jurisdiction to the Judiciary Committee.

I have got news for them, if ever they transfer it to the Judiciary Committee, I am number three man on that, and the chances are I am almost positive that I will be chairman of the subcommittee handling this very problem, if ever they transfer to the Judiciary Committee.

Mrs. ALLEN. That is why we want it abolished.

The CHAIRMAN. Pardon?

Mrs. ALLEN. That is why we want it abolished.

The CHAIRMAN. Oh, because you would not want to see me chairman of the Judiciary? Is that right?

Mrs. ALLEN. We don't want any committee to do the things this committee has done.

Mr. ROUDEBUSH. It sounds highly personal.

The CHAIRMAN. I am sorry that you take that position, Lady, and you make it hard for me to restrain myself and my words. As a matter of fact, I may as well come out, because I have come out on things. You know, you have been held in contempt of Congress.

Mrs. ALLEN. Yes, sir.

The CHAIRMAN. For your cutting up in connection with hearings of this very committee.

Mrs. ALLEN. I did not cut up at all, and got thrown out.

The CHAIRMAN. You did not cut up?

You had a big show in the hall, with TV. My friend on my right, Governor Tuck, was around. You might comment on that.

Mrs. ALLEN. Yes, the ladies did not like being called Communists.

The CHAIRMAN. All right. I won't dignify it with any further comment.

Mr. TRACY. Mr. Chairman, I would like to call attention to section 8 of the first article of the Constitution, which specifically justifies the responsibility of Congress, and the constitutionality of this committee, I think, is perfectly clear under that section of the Constitution, and that——

The CHAIRMAN. Read it. I am familiar with it, but I always like to hear the Constitution reread.

Mr. TRACY. To "provide for the common defense and general welfare." Now that is the Congress' responsibility and this committee is a legal committee of the Congress.

The CHAIRMAN. In other words, you envision the common defense as more than military attack, but the defense against ideologies. Is that right?

Mr. TRACY. "Common defense and general welfare" are the words of section 8 of the first article of the Constitution. I think that it is perfectly clear and I think that this committee should be able to do a much greater job and bigger job on behalf of the American people.

Now, I feel that the hand of the President needs to be strengthened, and that can be done only by legislation, such as the bill now before us.

I don't think there is the slightest question that the American public does not want communism. I don't think there is any question about it.

The CHAIRMAN. I completely agree with you. As a matter of fact, I said yesterday, and I asked your comment on it, if the word "communism" was wrapped up around the ugly package that they tried to sell, I don't think the American public would buy it at all, would it?

Mr. TRACY. Not at all.

The CHAIRMAN. Unless deceit was its primary mode of operation, I don't think they could get by anywhere.

Don't you agree?

Mr. TRACY. I certainly agree, and I would like at this point to compliment The American Legion and the Veterans of Foreign Wars and others who are doing such a wonderful job.

The CHAIRMAN. Incidentally today we are to hear from the head of the National Americanism Commission of The American Legion. He had a little plane trouble and he won't be here until 10:30, but we have again with us today a representative of the Veterans of Foreign Wars, who will succeed him, I understand, who is here.

Mr. TRACY. They are doing a wonderful job, and I have three very short items written by an attorney who was on the staff of the Commission on Government Security. One was published by The American Legion. Another one was published by the American Society for Industrial Security, and I would like to submit these for consideration of including.

The CHAIRMAN. Since they are short, they will be included in the record at this point.

Mr. TRACY. Thank you.

The CHAIRMAN. They will be placed in the appendix to the record, Mr. Tracy.[1]

Mr. TRACY. Now, as to the bill before us, section 1 of the bill clarifying the definition of Communist-front and Communist-action and Communist-infiltrated, I think, is very good, and I hope it will be adopted.

Section 2 of the bill will impose the duties of filing reports, statements, and so forth, upon organizations required to register, but which have not done so. I agree, and I think that amendment should be adopted.

Section 3 of the bill before this committee refers to the registration of organizations and the maintenance by the Attorney General of a public register.

The CHAIRMAN. That is right.

Mr. TRACY. The addition of Communist-infiltrated organizations, which have been determined to be such, to be added to the existing law.

The CHAIRMAN. Now I ask this question: I doubt that anyone can answer it as a matter of percentage, but could you define, could you give me an idea of what you consider to be a sufficiently infiltrated outfit to be termed as such? In other words, as I expressed it yesterday, if you add even a drop of ink to a glass of water, it will be tainted, so you can have infiltration, infinitesimal.

Mr. TRACY. I feel that whenever the policies and the objectives of an organization are controlled by Communists, that is sufficient.

[1] For these articles, written by Harold Ranstad, see appendix pp. 491–506.

The CHAIRMAN. That is exactly the point. That part is in the act itself.

Mr. TRACY. Right.

The CHAIRMAN. In other words, you would consider an infiltration that type of infiltration which in net result amounts to domination or control?

Mr. TRACY. Right. For example, if you have a hundred thousand or a million membership organization, and all the officers are members of the party, that is sufficient.

Ten people out of a million would be sufficient, under that type of a circumstance, because they control it, in my opinion.

THE CHAIRMAN. Well now, the ACLU man yesterday took us to task, because he said it was inconsistent with his notions of legislation to say that an organization can be dominated by one or more.

There is nothing impossible about that, is there?

Mr. TRACY. I do not know. I do not think so.

The CHAIRMAN. If it is sufficiently small, it certainly can be dominated by a strong-willed individual, be he a Communist or Baptist, or Republican or a Democrat. I know enough about public life to know that.

Mr. TRACY. And that is a question of fact to be determined by proper hearing before the SACB.

Now I would like to suggest for the consideration of this committee where the wording of section 2 indicates a public register maintained by the Attorney General. I hope you will consider putting that in the Subversive Activities Control Board.

The CHAIRMAN. Well, I am glad to have you say that, because Mr. Mahan, the Chairman of the Board, was here, and he expressed a preference that the bookkeeping of keeping the register should be not in the hands of the Attorney General, but in the hands of the Board.

Yesterday I had quite a conversation with Mr. Yeagley. You know Mr. Yeagley.

Mr. TRACY. Oh, yes.

The CHAIRMAN. He is head of the Internal Security Division of the Department of Justice. I don't want to say that he categorically is of that opinion; I got from him that that would at least not displease him or the Department of Justice that the keeping of the register of the names and addresses of persons determined as a matter of fact by the Board to be Communists, to be Communist organizations or front organizations, that register, according to Mr. Yeagley, he at the very least would not interpose any objection to the keeping of the books by the Board instead of the Attorney General.

Mr. McNamara nods his head that that is his general understanding of Mr. Yeagley's remarks.

Mr. TRACY. The Attorney General, as I see it, being a Cabinet officer and part of the administration, having the responsibility of prosecution, should not perform a function such as maintaining a list——

The CHAIRMAN. In other words, I think I can read there your mind what you are now addressing yourself to is that so sensitive is the principle of separation of powers that you don't want to vest in the Attorney General a power of duality of function.

Mr. TRACY. Right.

The CHAIRMAN. One for taking the action before the Board against respondents and, at the same time, one which is in the nature of an executive job, such as the keeping of a register.

So you would prefer for that reason, out of respect for division of powers, as I understand, since as you say the Attorney General is a Cabinet officer, a Cabinet member, and is a part of the executive, you would prefer that he be removed from that duty.

Mr. TRACY. Yes, sir; I think it would enable him to do a more objective job in removing names or adding names, if it were not in his own personal custody.

The CHAIRMAN. Well, I am glad to get your views, and I asked Mr. Mahan to talk to our general counsel and to suggest words of an amendment that he might consider, and by consider, I don't say adopt.

With nine members, I can't run this committee. But I would like to have, would like to see what wording it would take for the bill to accomplish the transfer of the keeping of the register out of the hands, out of the proposed hands of the Attorney General to the hands of the SACB.

Mr. TRACY. Right, sir.

The CHAIRMAN. I certainly submit it for consideration to the committee.

Mr. TRACY. Thank you.

Section 4 of the present bill adds a provision that any solicitation of money, property, or other things, made orally or by mail on behalf of any organization registered, shall be preceded by the statement, "This solicitation is made for or on behalf of (blank), which has been determined by final order of the Subversive Activities Control Board to be a Communist organization."

I see nothing wrong with that and I hope that that would be adopted.

Now, section 5 of the bill, to me, is the most important part of it, of the entire bill, and I would like to call attention to the Albertson case, 382 U.S. 70, decided November 15, 1965, which held a statutory requirement of registration by individuals to be unconstitutional.

The CHAIRMAN. Well, to me, that is the most important element of the bill, too.

Mr. TRACY. It was a unanimous decision, and I have no quarrel with the decision.

The CHAIRMAN. And I have none, either. I applaud it, If I had been a member judge of that Court, I would have so ruled myself. Perhaps for different reasons than motivated some of the judges, but nevertheless, the net result would be that I would have voted for that decision.

Mr. TRACY. Now, the Court made it clear then in that case, and I quote:

> The risks of incrimination which the petitioners take in registering are obvious. Form IS–52a requires an admission of membership in the Communist Party. Such an admission of membership may be used to prosecute the registrant under the membership clause of the Smith Act * * * or under § 4(a) of the Subversive Activities Control Act * * *, to mention only two of federal criminal statutes. * * *

Now, the proposed amendment would enable the Attorney General to seek only a determination of membership, and it seems to

me that would fully meet the objections of the Court in that case.

The CHAIRMAN. And I think that is what Congress had in mind in the first place; don't you?

Mr. TRACY. I would think so.

The CHAIRMAN. Yes; the keeping the people and the Congress informed of the names and addresses of persons who are members or who have to do with Communist conspiracy.

Mr. TRACY. Yes, and I think the section permitted—permitting an organization or an individual to make application for cancellation at any time is better than it was, and to require the SACB to receive evidence and proceed to a determination of the issues is good.

The CHAIRMAN. Well, that is then in the nature of a judicial review, and I am certainly for that, too.

Mr. TRACY. And in this connection, I would like to emphasize, as I mentioned yesterday, I feel it is vitally important that Congress make the congressional intent clear in all of these internal security laws, and that I think it might be well that a provision be included in this bill that it is not the intention of Congress to nullify any State laws then in the area of internal security.

The CHAIRMAN. Well, the Judiciary Committee has that subject. That is almost—I say "almost," because it is not in every instance, but in many, many instances that is almost a stereotype provision of criminal bills out of the Judiciary Committee, and that has to do with the Nelson case to which you referred, a sedition case.

In other words, there is a general clause in many of our Judiciary bills, which provides that the act under consideration shall not be construed to mean that the fact that Congress enters into this field or that field, that the field is to be considered to be totally occupied, and that there be left no room for State law. Governor Tuck, I think you reason as I do, and we might give consideration to putting such a provision in this bill.

Mr. TRACY. Yes, I think that would be wise.

The CHAIRMAN. We will give it consideration.

Mr. TRACY. Thank you. I was greatly concerned in the Keyishian case with a paragraph in the majority decision, in which the following words appear:

> In *Elfbrandt* v. *Russell*, 384 U.S. 11, we said, "Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees." * * * We there struck down a statutorily required oath binding the state employee not to become a member of the Communist Party with knowledge of its unlawful purpose, on threat of discharge and perjury prosecution if the oath were violated. We found that "[a]ny lingering doubt that proscription of mere knowing membership, without any showing of 'specific intent,' would run afoul of the Constitution was set at rest by our decision in *Aptheker* v. *Secretary of State*, 378 U.S. 500."

The CHAIRMAN. You are talking now about the case about the Feinberg law?

Mr. TRACY. Yes, sir.

The CHAIRMAN. The case in connection with the New York Feinberg law?

Mr. TRACY. Yes, sir, right; and I am quoting from the majority opinion:

In *Aptheker* we held that Party membership, without knowledge of the Party's unlawful purposes *and* specific intent to further its unlawful aims, could not constitutionally warrant deprivation of the right to travel abroad. * * *

Now, I submit that——

The CHAIRMAN. I might mention, although I would doubt that I would want to go on record as agreeing with it, that on the same reason or along the same basis, along the same line, the courts struck down section 6 of the act we are dealing with now, having to do with issuance of passports to members of the Communist Party.

You are familiar with that.

Mr. TRACY. Yes, sir.

The CHAIRMAN. I don't think I want to go so far that I agree with the holding in that case, but you are familiar with it.

Mr. TRACY. Yes, sir.

Now, I would submit, Mr. Chairman, that no decent, law-abiding, patriotic American citizen would join the Communist Party, U.S.A., after the Supreme Court determination that it is an agent of Soviet Russia and knowing its unlawful purpose.

Now, those who join with knowledge, giving support to the enemy merely by joining or encouraging, should not be employed, in my opinion, in any public service on any level, Federal, State, or local.

The CHAIRMAN. In other words, you would not go as far as the Supreme Court went.

Mr. TRACY. No, sir. I don't think public tax money should be used to subsidize its own destruction.

The CHAIRMAN. And that because of the language of Justice Clark, who said that the law of self-defense is one of the most important laws to the stability and continuity and life of a nation.

Mr. TRACY. Right.

The CHAIRMAN. Okay.

Mr. TRACY. They used the term "knowing knowledge" in the majority decision in the Keyishian case; now, "knowing knowledge," to me, is synonymous with guilty knowledge.

If one joins the Communist Party, knowing it is an agent of Soviet Russia, dedicated to overthrow this country, to me that is guilty knowledge rather than "knowing knowledge."

The CHAIRMAN. Well, it seems to me that I can detect a little bit of inconsistency in the Court's saying that there must be knowing knowledge of the membership with eyes wide open on the one hand, and then turning around and saying that you cannot be compelled to register because of the Smith Act, and to be consistent, they should have held the other way, it seems to me.

Don't you agree?

Mr. TRACY. I do, and there is another statement in the same Keyishian decision, majority decision:

Thus mere Party membership, even with knowledge of the Party's unlawful goals, cannot suffice to justify criminal punishment, * * * nor may it warrant a finding of moral unfitness justifying disbarment.

Now that I think is an astonishing statement.

The CHAIRMAN. That is a little too much for me to swallow.

Mr. TRACY. I hope that this committee has the greatest of success, that this bill be passed, and I hope that eventually this country will be able to defend itself against international communism.

Thank you, sir.

The CHAIRMAN. Thank you very much. We appreciate your testimony a great deal.

Mr. TUCK. Mr. Tracy, as I recall it, yesterday near the conclusion of your testimony——

Mr. TRACY. Pardon?

Mr. TUCK. As I recall it, yesterday near the conclusion of your testimony, you were being interrogated in regard to the subject of freedom of speech and the appearance of such a man as Gus Hall on the campuses.

Mr. TRACY. Yes, sir.

Mr. TUCK. Of various colleges in the country.

Mr. TRACY. Yes, sir.

Mr. TUCK. I come from a State which, I think, claims the privilege of being one of the first to enunciate the doctrine of free speech, in our precious Virginia Bill of Rights, penned by George Mason. I take it that you make a distinction between teaching about communism and advocating communism?

I take it, for instance, that Gus Hall would be advocating communism. I take it, for instance, that those four professors who were involved in the decision of the Supreme Court in the Feinberg case would be supposed to advocate communism.

On the other hand, the American Bar Association, with certainly a good many members, advocates teaching about communism, so as to inform them. Personally, I see no objection to teaching about communism, because the public ought to know about it, but I do have——

The CHAIRMAN. Well, as a matter of fact, in your great State, there is a very fine institution called the Freedom Studies Center, where people are informed or taught all about communism.

Mr. TUCK. Do you agree with me that there is a vast distinction between advocating communism, such as the appearance of Gus Hall and these four professors, and teaching about communism?

Mr. TRACY. Very definitely. I have been a member of the criminal law section of the American Bar for over 25 years. We have wrestled with this problem on education against communism and civil disobedience and what-have-you.

I retired from George Washington University in 1965, where I was concerned with the problem of speakers before our students on the campus for several years.

The finest definition of education and the problem of outside speakers on campuses is in the American Association of University Professors, June 1967 publication, written by James Kreuzer, dean of students at Queens College at the City University of New York, and how they solve it. The article is entitled "A Student 'Right' Examined."

The CHAIRMAN. Although I am a member, I have not read it, so I will suggest that it be made a part of the record and retained in committee files.

Mr. CLAWSON. Mr. Chairman, let's hear the definition. I am curious. You were going to give us the definition of education. Let's hear it.

Mr. TRACY. I agree with the way they solved it at Queens College, in which they had a committee of three faculty members, a committee of three students; and when any student organization wanted a speaker

of any type or kind, those two committees considered it and made their decision in favor or against.

If they, both of them, voted against a speaker, then the student organization, by majority vote, could override them and have the speaker anyway.

Now that, I think, is one approach to the problem.

The CHAIRMAN. And if they voted to hear, what would be the result?

Mr. TRACY. If they voted to hear, the speaker automatically came, and there is no problem.

Now, the professor writing this article points out, what does the administration and faculty do if the students want to bring in a dope addict to tell the students about the joys of taking dope?

There is a problem administration and faculty have to decide, whether this is education or not.

The CHAIRMAN. I think one of the witnesses yesterday would have an answer to that, because he advocated that if somebody would be that nervy to talk about the joys of dope, at least, at the same time, a doctor would come and say how evil that habit would be.

Mr. CLAWSON. Mr. Chairman, it was Mr. Tracy who made that comment.

The CHAIRMAN. In other words, you would want both sides?

Mr. TRACY. Both sides.

The CHAIRMAN. Well, I am glad of your broad approach. In other words, you don't necessarily oppose speakers, even Communists, on the campus?

Mr. TRACY. No.

The CHAIRMAN. Provided an invitation is issued, at least, to someone on the opposite side?

Mr. TRACY. Or someone who completely can introduce that person for what they are on the public record.

The CHAIRMAN. All right. Now I think that is a good addition to your position.

Thank you very much, Mr. Tracy.

Mr. TRACY. Thank you very much, sir. It was a privilege to be here.

The CHAIRMAN. You have been a wonderful witness and you have made a terrific contribution to our hearings.

Mr. TRACY. Thank you.

The CHAIRMAN. Our next witness is Mr. Stover, director of the National Legislative Service of the Veterans of Foreign Wars. I know Mr. Stover is in, because I shook hands with him. We welcome you, Mr. Stover.

You may proceed according to your choice.

STATEMENT OF FRANCIS W. STOVER, DIRECTOR, NATIONAL LEGISLATIVE SERVICE OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. STOVER. Thank you, sir. Mr. Chairman and Members of the Committee: Thank you for this opportunity to appear before this committee in behalf of legislation which will make the Subversive Activities Control Board more effective as contained in several bills under consideration.

My name is Francis W. Stover, and I am director of the National Legislative Service of the Veterans of Foreign Wars of the United States.

By way of introduction—the membership of the Veterans of Foreign Wars of the U.S. is near an all-time high—almost 1,400,000. Our membership has always deeply concerned itself with the menace of communism and all other subversive organizations, whose declared intent and purpose has been to violently overthrow our Government by any method or means, which they may deem appropriate.

The CHAIRMAN. In other words, you go one step further than the Smith Act which talks about overthrow of the Government by force or violence. You are against the advocacy of overthrowing the Government by any manner of means, and you think that ideological means is just as severe as armed or forcible means?

Is that correct?

Mr. STOVER. That has been our position, yes, sir.

The CHAIRMAN. In other words, in a way, sometimes the ideology is even stronger than a modicum amount of force. Isn't that right?

Mr. STOVER. That is right, sir.

The CHAIRMAN. Or in fact, as I see it, if you take all the formal Communist Party members in America, of whom there may be 12,000 now, if you let them try to play violent, I don't think they could do as much damage as if these 12,000 continue to do what they want, and inculcate the ideology of communism in the minds of the American public.

I see a greater threat in this particular instance, numerically speaking, in the ideology—in the ideological means, than in the capacity to use forcible means.

Mr. STOVER. That is right.

The CHAIRMAN. Do you disagree with that?

Mr. STOVER. I certainly do not. In fact, that has been our position down through the years.

The CHAIRMAN. Thank you very much.

Mr. STOVER. It was this kind of background and history which led our membership to strongly support the creation of the Subversive Activities Control Board in 1950. It will be recalled that the purpose of the establishment of this Board was to reveal to the American people, the Communist front, Communist-infiltrated organizations, and the members of the Communist organizations because such groups and persons, according to the findings of the Congress, constituted a real and continuing danger to our national welfare. Again the VFW lent its fullest support when legislation amending and enlarging the scope of the Board again was approved by the Congress in 1954.

It has come as a shock to our organization to learn that legislation has been introduced in this 90th Congress which would abolish this Board.

The CHAIRMAN. Let me say there has been very much of that.

Mr. STOVER. We welcome, therefore, the legislation which is before you, which will continue to allow the Board to carry out the purpose and intent of the Congress when it established this Board.

Our organization is controlled almost exclusively by the mandates adopted by the delegates to our most recent national convention. Many

of our members were cognizant of the lack of activity of the Subversive Activities Control Board when our convention was held in New York City August 1966—just about a year ago.

As a result of this concern over the weakening of the Internal Security Act which had shrunk the jurisdiction of the Board——

The CHAIRMAN. Well, I will repeat this remark, which I in effect made yesterday. Despite the opposition of those who are against this bill, if the time ever came when the Supreme Court were up on its calendar of cases, and someone should have the temerity to abolish the Court, you would have a hair raising on the part of the same people who are advocating the abolishment of this Board.

Mr. STOVER. Right.

The CHAIRMAN. And by the way, I would join them in that instance.

Mr. STOVER. Our position is found in the resolution that our organization adopted last year, at our most recent convention, identified as No. 268, which is entitled "To Strengthen Internal Security Act," which reads as follows:

WHEREAS, decisions of the United States Supreme Court have greatly weakened the Internal Security Act of 1950; and

WHEREAS, the Veterans of Foreign Wars was one of the sponsors and strong supporters of the Internal Security Act and amendments thereto since that time; and

WHEREAS, the Veterans of Foreign Wars has always led the fight to expose and identify communists and others who would undermine and destroy our Government and way of life; and

WHEREAS, there is now pending in the 89th Congress a bill, H.R. 16584——

The CHAIRMAN. By the way, that was the number of my bill last year.

Mr. STOVER. That is right.

We support that very strongly.

—which would greatly strengthen and improve the Internal Security Act and overcome the decisions of the Supreme Court which have greatly weakened the Internal Security Act; now, therefore

BE IT RESOLVED, by the 67th National Convention of the Veterans of Foreign Wars of the United States, that the Veterans of Foreign Wars supports H.R. 16584 and works for its advancement and approval by the Congress.

And this legislation today before you, Gentlemen, is a logical successor to this resolution.

Pursuant to this resolution, together with a host of other resolutions, which indicates the great concern of our organization with communism and its threat, both external and internal, to the American way of life, we strongly support the purpose and intent of the bills before this committee.

We do not come here as experts, but only to lend our support to legislation which will make the Board effective in registering Communists and other subversives, as defined in this legislation, so that the American people can know who they are and to what extent they are a danger or threat.

It cannot be emphasized too much that the Subversive Activities Control Board is the only agency in the executive branch which has the authority to provide this type of information to the American public.

The Board, however, does not operate in the dark—behind closed doors. On the contrary, it provides a full and fair hearing if there ever was one. It is a quasi-court which can hear and decide cases only after they have been brought before the Board by the Attorney General of the United States. All hearings are public. Like a court proceeding, there are reporters who keep a stenographic record of all that is said and copies of the hearings are printed. The Board before it makes its decision must make written findings of fact and conclusions of law. Lastly and most important, any final decision or order by the Board is subject to judicial review, and when appealed the Board's orders cannot become effective until they have been reviewed and sustained by the court.

During the past 17 years, this Board has performed a magnificent contribution in exposing Communists and others of the same ilk as defined by the Internal Security Act. Unfortunately, the language of the act has been construed on several occasions to be in conflict with the Constitution, which has greatly diminished the jurisdiction of the Board and apparently has been a great deterrent to the Attorney General in bringing more cases before the Board. Coupled with this are the long and lengthy appeals which have kept the orders of the Board tied up in the courts for long periods during which it was inadvisable to proceed with similar or other cases until a final decision had been handed down by the court.

The fact that there has been little activity on the part of the Board is the most compelling reason that this legislation should be favorably considered and reported by this committee. Something is wrong with the present law and should be remedied as quickly as possible.

Because there have not been any or many cases before a court of law does not mean that we want to destroy or eliminate the court.

Rather we want to strengthen the court. Similarly we want to strengthen the Board so that it can do the job Congress intended back when it established the Board in 1950 and, I am sure, wants the Board to continue in 1967.

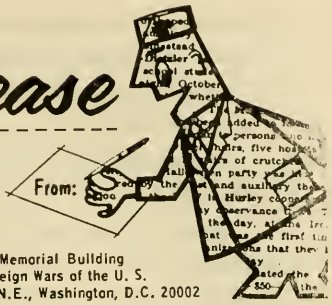
In summary, the Veterans of Foreign Wars commends this committee for taking the initiative in counteracting other legislation which has been introduced in the 90th Congress of recent date which would abolish the Board.

Your approach is the correct one so far as the Veterans of Foreign Wars is concerned and is the remedy that our organization advocated through the voice of our delegates at our national convention in New York last August as embodied in Resolution No. 268, as outlined above, and the forthright statement of our commander in chief, Leslie M. Fry, which he issued to the press on July 24, 1967, concerning efforts to abolish this Board, a copy of which is attached.

(The news release follows:)

NEWS Release

Telephone
Lincoln 3-2239



FOR RELEASE:

Washington Memorial Building
Veterans of Foreign Wars of the U. S.
200 Maryland Avenue, N.E., Washington, D.C. 20002

V.F.W. SUPPORTS SUBVERSIVE ACTIVITIES CONTROL BOARD

WASHINGTON, D.C. (July 24) -- The National Commander-in-Chief of the Veterans of Foreign Wars, Leslie M. Fry, Reno, Nevada, today announced "full support of the U. S. government's Subversive Activities Control Board."

Commander Fry said the V.F.W.'s action is necessary "because the present effort to discredit or abolish the Board has already been seized upon in the continuing efforts of Communist elements in this country to do just that."

In his statement the V.F.W. Commander noted that the present attack on the Subversive Activities Control Board followed the President's appointment and the Senate's confirmation of Mr. Simon McHugh, formerly of the Small Business Administration, as one of the Board members.

"The McHugh appointment, which has been confirmed by the Senate, is incidental to the issue of the compelling need for the continued existence and functioning of the Subversive Activities Control Board," Commander Fry said. "Those who are out to destroy this anti-Communist government agency are simply using the McHugh issue as a pretext and smoke screen for their attack on the Board."

Amplifying the V.F.W. position, Commander Fry said, "we of the V.F.W. vigorously support the Subversive Activities Control Board because it is needed in the interests of the defense of our government. This Board is the only agency in the Executive Branch

of the government for determining and informing the American people as to the identity of Communists and other subversive groups working for the destruction of our government."

Continuing, Commander Fry emphasized: "It is no mere coincidence that this attack on the Board comes at this very time when the Board is putting the public spotlight on the W. E. B. DuBois Clubs which have been agitating so viciously against our Nation's stand against Communist aggression in Vietnam.

Obviously, if the enemies of the Subversive Activities Control Board are successful in destroying the Board, they will be successful in protecting the DuBois club organization and its reported pro-Communist activities aimed at the American Youth.

"We of the V.F.W. believe that the citizens of our country are entitled to know who those are who are trying to destroy our country. This is a primary and necessary function of the Subversive Activities Control Board.

"To cut its appropriation or eliminate it would assist the Communists and handicap patriotic Americans."

Continuing, Commander Fry said, "the V.F.W. believes that instead of the Board being undercut or destroyed when it is so critically needed, it should be strengthened At the present time," he pointed out, "there are two bills pending before Congress to strengthen the functions and status of the Board. These bills, essentially the same, have been introduced by a total of about 50 Democrats and Republicans. This underlines the non-political nature of the support of the Board.

"The V.F.W. takes this position for a very basic reason. At a time when American fighting men are dying to resist Communist aggression in Vietnam, we must keep our faith with them by resisting Communist subversion at home.

"It is the purpose of the Subversive Activities Control Board to help our citizens in this sacred endeavor. Our citizens must not be deprived of their right to know who the Communist elements are. The American people are entitled to have this information, which they can get only through the existence of the Subversive Activities Control Board."

Mr. STOVER. Accordingly, the Veterans of Foreign Wars strongly recommends that this Board not only be kept alive and functioning, but that it be given the tools which it so needs to disclose and regulate the operations of the Communist conspiracy in this country. To fail to approve the legislation before you to strengthen the Subversive Activities Control Board will be to permit the Communists to win a 17-year battle by default.

You are strongly urged to favorably consider this legislation and report it to the House at the earliest opportunity, with the hope that it will go on through the Congress and be enacted into law at an early date.

Thank you, Mr. Chairman.

The CHAIRMAN. I don't know what might happen when it reaches the floor, but I can tell you that I am pretty sure that this bill will be reported out of this committee, and after that, it will be up to the

leadership. The first step, of course, after we approve it, and I am confident we will, will be to get a rule.

I will attend to that, try to get a rule, and then open up the door of the floor of the House for consideration. I will plead for that.

I was heartened to hear yesterday that the Senate, the other great deliberative body, for which they so pride themselves, and I congratulate them about it, beat us to the punch, at least to the committee action, that the Senate Judiciary Committee approved what amounts to this bill, because Senator Dirksen introduced a bill, which he said on the floor a few days ago was the Ed Willis bill, and he applauded it. And I am glad to see that action of the Senate committee and I am hopeful that we will give similar treatment to this bill in this committee, and I am quite sure we will, and that therefore it will become law, and I compliment you, I salute you, sir, for the position you have taken.

Mr. STOVER. Thank you very much, Mr. Chairman.

Any questions, Gentlemen?

Mr. ROUDEBUSH. Mr. Chairman, I would just like to comment. I certainly want to join with our chairman in welcoming Francis Stover before this committee.

The CHAIRMAN. Did not you give him a nickname a while ago?

Mr. ROUDEBUSH. Well, he is generally known as Smokey Stover, but I call him Francis today. I am aware of the VFW position. I was with the commander in chief, Leslie Fry, when he issued his statement in July, in strong support of the Subversive Activities Control Board, and I certainly concur with his stand and I join with our chairman in his determination and his desire to see this legislation reported favorably by this committee as quickly as possible.

Mr. STOVER. Thank you very much, Mr. Roudebush.

The CHAIRMAN. Thank you very much.

Mr. STOVER. Thank you, sir.

The CHAIRMAN. Mr. O'Connor, chairman of the Americanism Commission of The American Legion, as I indicated a while ago, had a little plane trouble. He is not here but I see that Mr. Mears is here.

Do you have any views as to when we might expect him, sir?

Mr. MEARS. I don't, Mr. Chairman; I am sorry. I got a call from New York this morning about 9:20 and they said that the 8:30 plane malfunctioned and they were trying to get him on another one, or hopefully would get him on the 9:30 one.

The CHAIRMAN. It is our hope that he will be here within the next 20 minutes. We estimated that he would probably be here by 10:30.

Mr. ROUDEBUSH. We are in session now.

The CHAIRMAN. We will be in session at 11 o'clock. Is that a written statement?

Mr. MEARS. This is his prepared statement. If you would care for me to substitute for him.

The CHAIRMAN. Do you mind reading it, because we would like to move along.

Mr. MEARS. About the only substitution I can do for Mr. O'Connor is read his statement.

The CHAIRMAN. That will be wonderful. By the way, tell Mr. O'Connor—give him my best wishes. It was such a joy for me to appear before The American Legion in Portland, Oregon, at the annual meeting last year.

Mr. MEARS. I was in that audience, Mr. Chairman.
The CHAIRMAN. I hope you thought I performed fairly well.
Mr. MEARS. I did, sir.
The CHAIRMAN. Proceed, sir.

STATEMENT OF DANIEL J. O'CONNOR, CHAIRMAN, NATIONAL AMERICANISM COMMISSION OF THE AMERICAN LEGION, PRESENTED BY MR. MEARS

Mr. MEARS. Mr. Chairman and Members of this Distinguished Committee: The American Legion is happy to be afforded the opportunity to appear here today to present the position of our organization on this vital legislation. We believe that the effectiveness of the Subversive Activities Control Board must be increased in order that the internal security of our country be strengthened.

H.R. 10390 and related bills, will breathe new life into the Subversive Activities Control Board and provide the necessary safeguards to our internal security which are needed at the present time and in the years ahead.

It is of utmost importance that the term "Communist-front" organization be clearly defined so that there can be no judicial interpretation which would excuse a Communist-front organization from the requirement of registering as such with the Subversive Activities Control Board.

H.R. 10390 would correct this present situation resulting from the decision in the case of *National Council of American-Soviet Friendship, Inc.* v. *Subversive Activities Control Board* (322 F. 2d 375) where the court reversed a decision of the Board requiring the council to register as a Communist-front organization.

The relationship between the Communist Party and a front organization must be clearly established. It is folly to conclude that no communication exists between the parent Communist Party and the members of the Communist Party who control a specific front organization concerning the aims and objectives of the Communist Party.

The legislation pending before you today will eliminate any requirement for self-registration by members of the Communist-controlled organizations. A significant factor in the proposed legislation authorizes a person who is no longer a member of a Communist-front organization to file an affidavit establishing the fact that he or she is no longer a member of such Communist-front organization. This will encourage those who have made a bona fide abandonment of any connection with the Communist conspiracy.

Registration by the Attorney General as provided in this bill must be part and parcel of the new law designed to protect our country against Communist organizations and Communist-front organizations.

Congress has required lobbyists and others to register with the appropriate agencies of Government concerned with their activities. Certainly Congress has the right to provide the machinery for the control of the Communist conspiracy whether it is acting openly or covertly through a front organization.

One of the more salient provisions of this legislation is the require-

ment that radio and TV stations broadcasting specific programs identify each organization, followed by the statement that it is a Communist or Communist-front organization. This is very important because we have been propagandized by radio and TV programs which have used the sly approach to sell communism over the airways.

I cannot overemphasize the importance of this particular provision because the members of The American Legion feel very strongly that Communists and Communist fronters shsould not be allowed the use of radio and TV to sell their insidious doctrine to millions of Americans, young and old, without making a frank disclosure of their origins and affiliations.

There is another safeguard in the bills before you which would require any mail solicitations by a Communist organization for donations to include a statement disclosing its true identity. If Americans are asked by mail to contribute to an organization, they are entitled to know that the organization soliciting the donation is in fact a Communist or Communist-front organization.

The American Legion believes that a Communist-controlled organization should not be allowed to dissolve then after action has been instituted by the Attorney General to cause such organization to register as a Communist organization.

This legislation would provide that the action of the SACB is valid and, when such dissolved organization is listed, that the dissolution be made a part of the record.

We believe, Mr. Chairman and Members of the Committee, that when an individual is contemptuous when appearing before the Subversive Activities Control Board, such conduct should be treated as contempt and punished. This legislation places the authority in the Subversive Activities Control Board to deal with a contempt case.

We will not attempt here today to take your time to go into every facet of these proposals. However, we strongly recommend to this committee that you report favorably on H.R. 10390 or a similar bill.

We have all witnessed the Communist Party's return in recent years to its image of the thirties, where its members are bold enough to actually seek political office in this land of freedom. If the lives and destinies of the people of this country are to be protected, we must have effective legislation adopted which will put teeth into laws controlling subversive activities and provide that the SACB shall execute its legally constituted mandates without being hampered by judicial decisions and dicta which render the board ineffective.

May I direct your attention to that part of an official pronouncement by Gus Hall, general secretary of the Communist Party of the United States, at a meeting of the National Committee of the Communist Party in December 1966?

Hall stated in part as follows:

> We must ask again: Is it correct or is it false to say that political independence is a process that is proceeding on many different levels, in many different forms? And are there not periods when the process takes on a qualitative surge? We are at such a moment now.
>
> This characterization dictates two tactical considerations. One is that our leadership must consider problems of work on all levels. The second is that the qualitative shift calls for more initiative, more boldness, more experimentation with independent forms.

I would summarize the three levels of independence as follows:
(1) Independent movements within the two parties—

The CHAIRMAN. Are you still quoting from Hall there?

Mr. MEARS. Yes, Mr. Chairman.

(2) Independent movements politically and organizationally outside of the two parties, but still using the two parties' electoral process, especially in the primaries.
(3) Broad, Left independent movements which very often include ourselves, the Communists.

On behalf of 2,600,000 members of The American Legion and 1,000,000 members of the American Legion Auxiliary, I urge you gentlemen to seriously consider the legislation before you because we believe that in your hands lie, in large part, the security of these United States of America. We are confident that you will accept the challenge and see to it that legislation is enacted which will help control Communist and Communist-front organizations.

Mr. Chairman and Members of the Committee, in closing I want to emphasize that it is imperative that this committee and the Congress take affirmative action to insure that the Subversive Activities Control Board can function as it was originally intended by Congress and thereby carry out its duties and responsibilities as defined in the Internal Security Act of 1950.

If this is not done the American people will have been rendered a great disservice.

Thank you, Mr. Chairman, for allowing me the opportunity to present this statement to you.

The CHAIRMAN. I thank you very much for your contribution, and tell Mr. O'Connor hello for me.

Mr. MEARS. I know he will be sorry he could not appear, sir.

The CHAIRMAN. Now the Chair would like to ask the members to remain for a while.

The committee will stand in recess until 10 o'clock tomorrow morning, when we will hear from additional witnesses.

(Whereupon, at 11:15 a.m., Thursday, August 17, 1967, the committee recessed, to reconvene at 10 a.m., Friday, August 18, 1967.)

HEARINGS RELATING TO H.R. 10390, H.R. 10391, AND H.R. 10681, AMENDING THE INTERNAL SECURITY ACT OF 1950

FRIDAY, AUGUST 18, 1967

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The committee met at 10:10 a.m. pursuant to recess, in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana, chairman; Richard H. Ichord, of Missouri; John C. Culver, of Iowa; and Del Clawson, of California.

Staff members present: Francis J. McNamara, director; Chester D. Smith, general counsel; and Alfred M. Nittle, counsel.

The CHAIRMAN. The committee will come to order.

Our first scheduled witness this morning is the Honorable Mr. Justice Michael A. Musmanno of the Supreme Court of Pennsylvania.

Judge, I am delighted to see you again. I have had the pleasure of meeting you before.

Judge MUSMANNO. Yes, sir.

The CHAIRMAN. In connection with hearings in New York. Do you remember?

Judge MUSMANNO. I will never forget.

The CHAIRMAN. You, Bernard Baruch, and Teddy Roosevelt's son were regular attendants at those hearings.

Judge MUSMANNO. Yes, and we haven't lost any of our zeal since then.

The CHAIRMAN. In fact, when we talked about a few minutes ago—you remember, one famous, or infamous, witness was Pete Seeger. Do you remember?

Judge MUSMANNO. Yes, I remember.

The CHAIRMAN. And he came with his guitar?

Judge MUSMANNO. Yes.

The CHAIRMAN. Tell what you reminded me of, that he was trying to emulate his life compared with whom?

Judge MUSMANNO. With our Lord.

The CHAIRMAN. With our Lord, that is right. And Tad Walter backed him down.

Judge MUSMANNO. Oh, yes. Yes, indeed. You and I were ready to support him, too.

The CHAIRMAN. That is right.
Judge MUSMANNO. Shall I proceed?
The CHAIRMAN. Yes, please do.

STATEMENT OF HON. MICHAEL A. MUSMANNO,[1] PENNSYLVANIA SUPREME COURT JUSTICE

Judge MUSMANNO. Mr. Chairman and Members of the Committee:

I recommend to this honorable committee the approval of H.R. 10390, amending the Internal Security Act of 1950.

Federal courts, and I say this with respect, have, in the application of the first and fifth amendments to the Constitution, dismantled many guns of the Internal Security Act. It is imperative that those guns be repaired and reactivated. H.R. 10390 provides the tools, the materials, and the armament required to reestablish the Internal Security Act as the supreme redoubt defending the American people, American institutions, and American freedoms from Communist assault within our own borders.

I do not know whether the language in the original act of 1950 was inadequate to meet the situations appearing in the various cases which have resulted in holding the United States forces at bay in their prosecution of the enemies of our country, but I do know that, under some decisions of our courts, Communists, spies, and Soviet agents have been able to turn the fifth amendment into a fifth column marching against the security of the Nation.

Obviously, I do not criticize the judicial branch of the Government, of which I am a part, but I would be disappointed if the legislative department of the United States did not take whatever steps are required to outgeneral the fifth column and restore faith in the people that our Government has the required brain power and resourcefulness to defeat the circumvention of the Communists and those whose purpose it is to overthrow our Government.

The original act defined a Communist-front organization as any organization which is substantially directed, dominated, or controlled by a Communist-action organization.

This language imposed on the Government a burden of proof that was unnecessary and gave to the accused Communist-front organization an undue advantage because it might be difficult for the Government, if not actually impossible, to establish that the Communist Party itself, by official action, directed the action of a particular Communist-front organization.

The CHAIRMAN. Judge, I have expressed it this way, that the Communist Party doesn't go around handing out powers of attorney, yet the Court required technical proof of express agency, which is an impossible burden. Don't you agree?

Judge MUSMANNO. Yes, that is right, Mr. Chairman, and I agree with that completely.

---

[1] *Judge Michael A. Musmanno,* formerly a judge on the International War Crimes Tribunal at Nuremburg, has been a judge of the Pennsylvania Supreme Court since 1952 and has also served as a member of the Commission on International Rules of Judiciary Procedure. A graduate of four universities, he was admitted to the Pennsylvania bar in 1923, served in the Pennsylvania State Legislature, 1929–31, and as a county court and common pleas court judge during the years 1932–51.

It certainly should be enough to show that the questioned organization is a Communist-front organization when the Government proves that a member of the Communist Party is directing the Communist-front activities.

A member of the Communist Party is a person committed to the very definitely recognized aim of the Communist Party, namely, to overthrow our Government by force and violence. This aim is never distant from the Communists' thoughts, and it never disappears from his plan of operations.

The direction, domination, or control by a member of the Communist Party in the activities of an organization is like a firebrand. It burns whatever it touches. Therefore, there should be no need to go further than to prove Communist Party membership of the person in question.

I, therefore, believe that conditions of today demand the adoption of the clause B outlined and described in the Section by Section Analysis of H.R. 10390 prepared by this committee.

After the decision of the District of Columbia Circuit Court in the case of *National Council of American-Soviet Friendship, Inc.* v. *Subversive Activities Control Board*, 322 F. 2d 375, it became the duty of this committee to advise Congress of the demanding necessity of amending the Internal Security Act as here indicated.

The Supreme Court of the United States in the case of *Albertson and Proctor* v. *Subversive Activities Control Board*, 382 U.S. 70, held that when a Communist-action organization fails to register, it would be unconstitutional to require a member of the Communist organization to register under section 8 of the Internal Security Act because this would impel self-incrimination enjoined by the fifth amendment.

I congratulate this committee on having found a method to combat the Communists who use the fifth amendment as a fifth column to march on the security of our country. Under section 2 of H.R. 10390, the Communist Party member is not asked to identify himself as such. The Attorney General petitions the Subversive Activities Control Board to determine the membership as to each individual he has reason to believe is a member of the Communist Party.

I congratulate this committee on this plan, which will outwit and outgeneral the Communist who seeks to use the fifth amendment of the Constitution to destroy the very Constitution under which he seeks protection.

Section 3 of H.R. 10390 plugs up another hole in the Internal Security Act, discovered or caused by the decision in the Albertson-Proctor case, so that the Attorney General will now maintain a public register of Communist-action, Communist-front, and Communist-infiltrated organizations.

Section 4 of H.R. 10390 will protect people who unwaringly contribute funds to organizations committed to the overthrow of our Government by force and violence by requiring that any Communist organization using the mails or employing television or radio for the collection of funds declare that: "This solicitation is made for or on behalf of , which has been determined by final order of the Subversive Activities Control Board to be a Communist organization."

Mr. Chairman, so far as I am concerned, I cannot quite understand

why we allow any organization to use the facilities of our Government and the free air of free America in any project designed to demolish our freedoms, enslave the mind, and enchain the spirit of the American people.

It has been proved by hundreds of congressional investigations, thousands of witnesses, and billions of words of testimony, as well as countless irrefutable acts of revolutionary planning, plus demonstrated violence, that the Communist Party in America is a predatory wolf on an ever-lengthening leash from Russia.

Yet we temporize with this outlaw gang of traitors and spies, allowing them to poison the wells from which our youth drink and permitting them to derail the trains of law and order.

However, since we still have those who believe the first and fifth amendments may be used as Trojan horses by seditionists and Quislings, I suppose we have to employ the method outlined in section 4 to protect people who still cannot distinguish between a wolf and a sheep dog.

Section 5 of the House bill under consideration provides another laudable method to prevent Communists from using the fifth amendment to strangle the other nine amendments of the Bill of Rights. When a Communist fails to register, the Attorney General will petition the SACB to determine that person's membership in the Communist Party.

Section 5 of the bill arms the Attorney General with an excellent weapon to fight what the United States Court of Appeals for the District of Columbia in *Labor Youth League* v. *Subversive Activities Control Board*, 322 F. 2d 3648, regarded as a dead dragon—but one which could well prove to be a live dragon only playing dead or asleep.

The court, in that case, stated that if a Communist-front organization ostensibly dissolves after the Attorney General has filed proceedings to compel its registration, all proceedings against it must cease, since it is not an "existing entity."

Secton 5 provides that even though a Communist-front organization has declared its dissolution, the Attorney General may still petition the SACB to conduct hearings on the activities of the supposedly dead dragon and publish a report of those activities. This proceeding will make it difficult for the Communist within the skin of the dead dragon to crawl out and operate within the skin of another animal.

The U.S. court of appeals in the Labor Youth League case fallaciously argued that to require a dissolved Communist-front organization to register would do harm to those who had been innocently entrapped into the organization and that if the organization were required to register, these guiltless persons would be "enveloped in a cloud."

I cannot quite understand this overbalancing of sympathy for supposed dupes as against society which needs to be protected from Government wreckers. After all that has been printed, shown, and demonstrated about the methods of Communists it must be a rather careless individual who allows himself to be entrapped by them. But if a person has actually been entrapped, it is to his advantage that the method of entrapment be made public, rather than that his involvement should become a skeleton in a closet ready at any time to jump out and rattle

out an accusation of disloyalty when he will not have the resources of the Government to assist him in proving that he had been criminally pushed into the pit of Communist conspiracy.

I would like to interject here that a person who has actually innocently become involved in some Communist-front organization, if he really didn't know what they were doing, should welcome an opportunity to come before the Board or go before the public and explain how he was fooled, deceived, and entrapped.

Not only would this action clear his name, but it would protect others who might similarly be pushed into the pit of apparent self-involvement.

In the effectuation of the procedure outlined in this section, witnesses who can supply needed information and data on the activities of the ostensibly dissolved Communist-front organization may be granted immunity from prosecution if they refuse to testify under fear of self-incrimination.

Section 5 of the bill wisely provides that misbehavior before the SACB may be punishable as contempt of court.

The CHAIRMAN. Judge, at this point, a witness before this committee in opposition to this bill, a representative of the ACLU—the American Civil Liberties Union—took the view that defining the actions of someone before the Board as "misbehavior" was such a vague thing that no one could construe it.

Isn't that the term used in all of these statutes—"misbehavior" or "contumacy"?

Judge MUSMANNO. I agree with you totally.

The CHAIRMAN. In other words, as a matter of fact, certainly no one could, and no one will try to, prosecute someone for raising his eyebrows or doing some kind of thing that is not physical and overt misbehavior.

I don't see that there is anything vague about the word "misbehavior." Do you?

Judge MUSMANNO. No. No, on the contrary——

The CHAIRMAN. That is the word in the statute right now.

Judge MUSMANNO. I give instances here when I say that too long have Communists and Communist accomplices been allowed to make a mockery of judicial proceedings through the use of obstructionist methods—as, for instance, excessive shouting, disturbing noises, and clownist grotesqueries.

I am sometimes——

The CHAIRMAN. As a matter of fact, Judge, something ought to be done to punish misbehavior before a quasi-tribunal, such as the SACB, as well as the court. Don't you agree with that?

Judge MUSMANNO. Oh, yes. The American Civil Liberties Union is given to straining at a gnat and swallowing a camel.

In another field entirely, they are constantly arguing that the word "obscenity" isn't clear, and, therefore, we cannot possibly have any laws to punish obscenity and pornography, because there are so many different interpretations of those two words.

And when they ask me to define "obscenity," I say that the word "obscenity" is about as vague as the word "cat." When one sees something obscene, he doesn't need any meticulous definition of what is obscene. He is revolted.

And so the same thing is true with "misbehavior." If someone comes here and begins to jump up and down, and screams, I think you could leave it to any jury to determine whether that was misbehavior or not.

This is merely a scheme on the part of the American Civil Liberties Union to try to turn this honorable and distinguished committee that is doing so much to protect the liberties and the security of our country into a mockery.

Mr. CULVER. Mr. Chairman——

The CHAIRMAN. Yes.

Mr. CULVER. If the gentleman would yield, isn't "obscenity" somewhat like "beauty," in that it is in the eyes of the beholder?

Judge MUSMANNO. Yes, that is correct.

Mr. CULVER. "Obscenity" to some is one thing, and "beauty" to some is another.

Judge MUSMANNO. Well, no. Now, Mr. Congressman, I wouldn't go along with that. No. Because I think that something that is beautiful, is beautiful to the world.

Mr. CULVER. Is that true? What about modern art?

Judge MUSMANNO. I don't like that comparison, because then you would say that an individual who is steeped in filth and mire, and whose thoughts are constantly permeated with pornographic images, might not be revolted at what would be obscene in the eyes of the average citizen.

Mr. CULVER. What I was trying to suggest is, the difficulty, I think, in using a term such as "obscenity" for objective evaluation and assessment is that it is really a subjective determination.

Obscenity to a Calvinist minister may well be a miniskirt. Is that obscenity in the context of modern American mores?

Judge MUSMANNO. No, but I am——

Mr. CULVER. Pardon? I didn't hear your answer. Yes or no? Is a miniskirt obscenity in the context of modern American mores, even though it might well be deemed obscene in the eyes of a Calvinist minister?

Judge MUSMANNO. Well, my answer is as follows: I am perfectly willing to leave to a jury of 12 people, chosen from all walks of life, to determine whether something is obscene or not. In other words, my criterion is community standards—not the view of a Calvinist minister or the view of a roué.

Mr. CULVER. I think that is an entirely different thing than what you initially suggested, however.

Judge MUSMANNO. I only gave this as an illustration.

Mr. CULVER. That obscenity can be uniformly agreed upon?

Judge MUSMANNO. According to community standards. That is my criterion.

Mr. CULVER. I have had the pleasure of reading several of your books and I was interested in your references to the ACLU.

I wondered, on the occasion of your very courageous defense in the Sacco-Vanzetti case, when you slept on the floor in Boston——

Judge MUSMANNO. Oh, I thank you for reading my book. You certainly have——

Mr. CULVER. —if you had the support of the ACLU in that effort?

Judge MUSMANNO. I didn't have the support of the ACLU. The ACLU was in there, making hay for their own selfish purposes. The Communist Party was collecting money from poor laborers——

Mr. CULVER. Why are you so comfortably prepared to say that the motivation of the ACLU is distinguished from your own as being self-interested, and yours was a compassionate, humanitarian, voluntary exercise in the highest traditions of the bar?

Judge MUSMANNO. Mr. Congressman, I do not deny for one moment the American Civil Liberties Union has done some wonderful things—has defended people who have been persecuted.

It may interest you to know that the American Civil Liberties Union, in 1932, conferred upon me their award in the State of Pennsylvania——

Mr. CULVER. You didn't——

Judge MUSMANNO. —for courageously defending the rights of certain students at the University of Pittsburgh.

Therefore, when I make this statement, I don't blanketly condemn the American Civil Liberties Union.

Mr. CULVER. I am pleased to hear that.

Judge MUSMANNO. But I certainly do point out that when they come before this committee and argue to you that "misbehavior" is so vague a term that people might be improperly punished for doing what ordinarily is just merely a demonstration of excessive zeal, I say that they are using bad logic. And then I gave as the illustration what they have said about obscenity.

Now that's how we happened to get into this field of discussion.

Mr. CULVER. As I understand their testimony on that occasion—You please correct me, Mr. Chairman, because I haven't made my own determination yet whether I find it sufficiently vague or not for this purpose. But I think what they were concerned about was the ordinary usage. I think they preferred a word of art, a term of art that had a more long-standing judicial construction.

Judge MUSMANNO. What would that be?

Mr. CULVER. In the courts, like the other words that the chairman suggested, "contumacious conduct."

Judge MUSMANNO. Yes, I know, but——

Mr. CULVER. Where you have precedents and you have some examples. And I think that particularly in this very delicate area—and I think you would agree, Judge—reasonable men could differ on that.

Judge MUSMANNO. Oh, absolutely.

Mr. CULVER. And I haven't made my own determination.

Judge MUSMANNO. I agree with you, Congressman.

Mr. CULVER. And I was just interested in one last question here, if I may.

On page 3 of your statement, at the bottom of the paragraph, you write that: "So far as I am concerned, I cannot quite understand why we allow any organization to use the facilities of our Government and the free air of free America in any project designed to demolish our freedoms, enslave the mind, and enchain the spirit of the American people."

Judge MUSMANNO. Yes.

Mr. CULVER. Now, in the context again of the Sacco-Vanzetti case, wasn't one of the great difficulties you encountered the political climate of the period?

Judge MUSMANNO. Yes.

Mr. CULVER. And the irrationality that some of their very unorthodox political view elicited in the Boston community?

Judge MUSMANNO. That is right.

Mr. CULVER. And served to poison the merits of the issues involved in their particular alleged crime?

Judge MUSMANNO. Yes. Yes, I agree with you completely, but I want to make this explanation and differentiation.

Congress, during the last 25 or 30 years, has held countless hearings on the subject of the Communist Party. Anyone who today will say that he doesn't know the aims of the Communist Party is either deliberately falsifying or is quite stupid.

Mr. CULVER. Well, if I may, Judge, what I am concerned about is you say: "So far as I am concerned, I cannot quite understand why we allow any organization"——

Judge MUSMANNO. Oh, wait, now.

Mr. CULVER. The bottom of page 3, sir, in the last paragraph, "any organization to use the facilities of our Government and the free air * * *."

Judge MUSMANNO. In any project designed to demolish our freedoms.

Mr. CULVER. Now, on Beacon Hill, at the time of the Sacco-Vanzetti case, if you took a poll and you said: "Does advocacy of socialist political theory represent (a) demolishment of our freedoms, (b) enslavement of the mind, and (c) enchainment of the spirit of the American people?"—What do you think the poll result would have been on Beacon Hill in that period of American history?

Judge MUSMANNO. Mr. Congressman, you must take it that this——

The CHAIRMAN. I agree with the judge as a matter of construction, but I think you have got to take the whole sentence.

Judge MUSMANNO. The whole sentence, and you must take the whole paragraph.

The CHAIRMAN. Any organization designed to do that thing—demolish our freedoms. That is the controlling sentence.

Judge MUMANNO. Not only that, Mr. Chairman, but I follow it up. The following sentence is descriptive of the preceding sentence.

The CHAIRMAN. Of the type of organization.

Judge MUSMANNO. "It has been proved by hundreds of congressional investigations, thousands of witnesses, and billions of words of testimony, * * * plus demonstrated violence, that the Communist Party in America is a predatory wolf on an ever-lengthening leash from Russia."

That is the organization that I refer to in the preceding sentence, when I say "Why we allow any organization."

Mr. CULVER. So you say "any organization," and you have specific reference here to the Communist Party?

Judge MUSMANNO. Oh, yes. Absolutely.

Mr. CULVER. What about a known Communist, Gus Hall, being invited to address the campus at the University of Pennsylvania? Would you favor that or oppose it?

Judge MUSMANNO. I not only unfavor it, I condemn it. I think that it is absolutely a misuse of the taxpayers' funds to allow a Communist firebrand, a traitor, a subversive ——

Mr. CULVER. What if it is a private institution?

Judge MUSMANNO. It might be different.

Mr. CULVER. Where there is no taxpayers' money involved?

Judge MUSMANNO. It might be different with a private institution.

Mr. CULVER. Your concern would be, then, whether or not it was consistent with the taxpayer's attitudes in terms of what the university does or doesn't do?

Do you think the individual taxpayer has the standing to challenge an academic determination of a State-supported institution as to whether or not they give instruction on birth-control pills, or anything else?

Judge MUSMANNO. He certainly has the right to know what is being done with his money. And if that money is being used to give aid and comfort to a Communist, who has only one purpose, and that is to destroy our Government, then I say that he has a right to complain. And Gus Hall should not be invited to speak to students whose tuition is being paid for in great part by the taxpayers.

Mr. CULVER. But you might distinguish for the private institutions——

Judge MUSMANNO. Yes, I could.

Mr. CULVER. Thank you, Mr. Chairman.

Judge MUSMANNO. Now I would like you to consider this particular paragraph 4 of section 5, which I think may run into trouble. I am for it, but I would like to have you consider it.

That paragraph provides that no court of the United States shall have jurisdiction to question proceedings before the Board after the hearing in question has been completed.

I doubt that the Supreme Court would sustain a legislative enactment of this kind, because it can be argued that this prohibition seeks to impair the functioning of the courts.

In behalf of court intervention it can be said that if the appeal to the court is a frivolous one, the court can quickly so declare.

I would say that the suggested amendment is a salutary one because, as the analysis well points out, "The amendment is designed to remedy a serious problem in the administration of the title, by prohibiting a practice frequently resulting in inordinate delays and the frustration of the purposes and orderly procedures of the title."

You are confronted here with a very extraordinary situation, and I am perfectly willing to go this far. But I can understand, as a judge, that the judiciary in general might look askance upon any legislative enactment which would say to the courts that you may not take jurisdiction of a petition or a complaint in mandamus or for an injunction.

I do not believe that sections 6, 7, and 8 require any comment, because they provide for certain conformities because of changes already described or which need no explanation.

I cannot express too emphatically the intense gratification I feel in the initiative action taken by this committee to hold firmly with the Internal Security Act against those who would seek to destroy it, together with this committee, which deserves the gratitude of the

entire country for its courage in doing its duty, regardless of the attacks made upon it by disloyalists and those who, while loyal to this country, do considerable damage to its free institutions by ill-informed, misguided, and wholly unfounded criticisms, censures, and animadversions.

A Senator of the United States has declared in a book that this committee is "a scourge of the individual whose loyalty to his country the members of the Committee may suspect."

This committee is not a scourge to any person. No person who comes before this committee is denied the fullest opportunity to tell the truth so that he may stand before the world revealed in the best possible raiment his own words may clothe him in. Nor can it be said with fairness that merely because a person is invited or subpenaed to testify that this stigmatizes him as being unloyal.

I trust that H.R. 10390 will be enacted into law without excessive delay, because too long have the Communist Party, its members, and members of Communist-front and Communist-infiltrated organizations treated with scorn the long-considered and formally enacted laws of the United States Congress dedicated to protecting the security of the United States.

Edward S. Montgomery, reporter for the San Francisco *Examiner*, in testifying before the Senate Internal Security committee, said:

> Congress seems to have lost all power in dealing with subversion. For all intents and purposes the Smith Act has been gutted. The Internal Security Act has been rendered inept. I feel sure I am not alone in feeling that something must be done at the legislative level to rectify the havoc that has been wrought.

I do not agree that the Internal Security Act has been rendered inept, but there can be no doubt that legislative action is required to bring a proper balance to the conflict between the United States Government and those who would destroy it.

Legislative action is particularly required to undo the damage done by those who are in no way involved with the Communist Party but who, by their words and deeds, offer a cloak of protection to those intent on overturning the Government of the United States by force and violence.

It has become almost a vogue among a certain class in the United States to treat with scorn those who see a serious threat to the security of our Nation in the machinations, plottings, propaganda, and tumult engineered by the Communist Party.

I don't know what kind of myopia afflicts those who still speak casually and lightly of Communists in America. They utterly ignore, as if it did not happen, the appallingly monstrous fact——

The CHAIRMAN. Judge, at this point, I want to say that I admire your sense of balanced judgment in questioning the literal meaning of section 5(d), page 11, lines 1 to 15, of the bill, because, like you, I believe that we cannot, and ought not even try to, deny judicial review of the actions of the Board.

However, I point this out, that my interpretation, in fact, in the analysis of the bill, it is stated that the intent of that sentence is that it would deny jurisdiction of Federal courts to entertain dilatory collateral proceedings, and so on.

Now, with those qualifying words, I think probably that would be justified. In other words, you take, for instance, the great writ of habeas corpus, which is the greatest, I think, of all writs.

As you know, that writ has been used by certain people as an opportunity to have the Federal lower courts review the decisions of the highest courts in the States, by one repetitious writ after another. You are familiar with that.

Judge MUSMANNO. Yes, I am.

The CHAIRMAN. And three times I was author of, and succeeded in piloting on the floor, an amendment—I mean a proposal—which would tighten up that practice, so that the great writ of habeas corpus should not, in my opinion, as sacred as it is, be used as a tool to permit Federal district courts the right to review and overrule, in effect, decisions of the highest courts of a State.

So I say I admire your sense of balanced judgment in raising that issue about the wisdom or lack of it in connection with this particular section of the bill. But I don't think, however, we are too far apart, because my interpretation of it and my idea of its meaning is that it is to stop dilatory collateral proceedings of attack, just as you have dilatory attacks in connection with the writ of habeas corpus by low Federal court reviews of decisions of highest State courts.

We can't overrun or modify the letter of a bill by a report, but at least we have a right, as a matter of legislative history, to put the intent in a report. I mean by that language that no court should be used as a means of attacking collaterally and dilatorily the proceedings of the Board.

In that context you wouldn't object too much, would you?

Judge MUSMANNO. The only reason I go along completely with what the honored chairman has said is that, being a judge myself and having lived in a climate of judicial proceedings now for close to 4 decades, I am afraid that if these collateral, dilatory proceedings were permitted, a judge would wait too long before making his decision.

If judges were prompt and would quickly dispose of something obviously frivolous—and something obviously introduced only to delay proceedings—then I don't think you would need this.

Mr. ICHORD. Will the chairman yield at this point?

The CHAIRMAN. Yes.

Mr. ICHORD. I want to compliment the judge at this time. It is a great pleasure, Judge, to have you before the committee. You are making a very, very wonderful statement.

I studied the particular provision under discussion at the present time, in my office, before coming to the committee meeting this morning, and I feel very strongly that the committee will have to doctor up the language of this provision.

The CHAIRMAN. I may agree with you.

Mr. ICHORD. I think an amendment is in order.

Now, I agree entirely. I am in total agreement with the chairman insofar as his objectives——

Judge MUSMANNO. Yes, yes.

Mr. ICHORD. —are concerned. And I am sure the witness this morning is also in agreement. These collateral attacks are being used to destroy the dispensation of justice, rather than to help the dispensation of justice.

Now, the language reads as follows at the beginning of page 11: "The authority, function, practice" would be——

The CHAIRMAN. Would the gentleman yield?

Mr. ICHORD. If I may finish this——

The CHAIRMAN. I agree. Please proceed, because I want to agree with what you are saying—but with one modification, that we may go along together, even, on what you say.

Mr. ICHORD. I think we are all together if we can find a proper amendment and the proper language.

At the top of page 11 is the following:

The authority, function, practice, or process of the Attorney General or Board in conducting any proceeding pursuant to the provisions of this title shall not be questioned in any court of the United States, nor shall any such court, or judge or justice thereof, have jurisdiction of any action, suit, petition, or proceeding, whether for declaratory judgment, injunction, or otherwise, to question such, except on review in the court or courts having jurisdiction of the actions and orders of the Board pursuant to the provisions of section 14, or when such are appropriately called into question by the accused or respondent——

The CHAIRMAN. That is the meat of it all.

Mr. ICHORD. [Continues reading:]

as the case may be, in the court or courts having jurisdiction of his prosecution or other proceeding (or the review thereof) for any contempt or any offense charged against him pursuant to the provisions of this title.

Now, the provision seeks to prohibit any collateral attack upon the proceedings.

The CHAIRMAN. That is right.

Mr. ICHORD. Before a final order.

I am wondering if the judge could suggest some approach, some different approach. Could we not, perhaps, provide for more prompt disposal of such collateral risk, that would be the proper approach, rather than prohibit it altogether?

Judge MUSMANNO. Yes, I think that if you would add a period of limitation within which the court must act, and if it fails to act within that period, then automatically those proceedings would terminate and be of no further obstruction in the proceeding of the Board in connection with the matter before it.

I think that would be it, because that is the only fear I have, Congressman, and I know that judges have human frailties and like to put aside——

The CHAIRMAN. Judge, I want to compliment both you and my colleague from Missouri for this colloquy. It is clarifying a lot of things in my mind.

I think the nub and the crux of all of this is that, in effect, I was right when I said it prohibits or seeks to limit the raising of dilatory and collateral issues.

In effect, what this statute is saying is that you are entitled to—and it specifically says that you are—a review, but you must first raise those points before the Board. That is the nub of it all.

Don't you agree with that?

Judge MUSMANNO. But I can see——

Mr. ICHORD. I shall visualize a set of circumstances and facts whereby there could be need for an immediate appeal—or a collateral attack. I can't prohibit it in all cases.

Therefore, I think that the best procedure would be to limit——

The CHAIRMAN. We could use the word "prompt" or something.

Judge MUSMANNO. I think you should actually indicate a chronological limitation. "Prompt" comes back to misbehavior; "prompt" is really a relative term.

The CHAIRMAN. Yes. Will counsel keep that in mind before we have an executive session on this bill, please?

Judge MUSMANNO. I would be willing to withdraw any adverse comment on that provision, if you include that in any appeal to the courts, the court must decide within 30 days the objection, and on failure of such disposition of the appeal, the Board would proceed as if it had not been interrupted in its proceedings.

Mr. CULVER. Mr. Chairman.

What is the case, Judge, if you have a lazy judge?

Judge MUSMANNO. That is what I am talking about.

Mr. CULVER. And he is so lazy that even the congressional intent doesn't manage to prod him into consideration of the merits of the collateral matter before him?

Judge MUSMANNO. But that is the reason I say, if he is a lazy judge and does nothing for 30 days, the appeal falls.

Mr. CULVER. That really penalizes the person bringing the appeal, doesn't it?

Judge MUSMANNO. Yes, it does, unfortunately. But I don't know of any other way to get around it.

Certainly, he can then appeal to the Board and say: "I am before a lazy judge, and I want this to be on the record."

And then, eventually, when the case comes up on appeal before a final court, the sloth and indifference of this judge may be brought to the attention of the people, and he may not like that so much. And other judges may be a little more prompt.

Mr. CULVER. That might be very appropriate retribution for the lazy judge, but what about the poor individual that didn't have the consideration on the merits of his appeal?

Judge MUSMANNO. We are hoping——

Mr. CULVER. That's the one to protect, isn't it?

Judge MUSMANNO. But we are hoping that in the final disposition of the case his rights will be absolutely guaranteed.

Mr. ICHORD. If the gentleman will yield, I would point out to the gentleman that there would be review. There would be review later on.

Judge MUSMANNO. Oh, yes, of course; and the bill provides for that. The bill provides for a final review.

Mr. ICHORD. Justice in the law is never going to be any better than the human element.

Judge MUSMANNO. I have in mind an absolutely guiltless individual who is brought before the Board, and the Board really has no jurisdiction. They have nothing to do with this man, and he is being harassed, and his name is being slandered, so he goes into court.

He says: "Now, there is something absolutely wrong about this. My fundamental constitutional rights are being violated."

He should have the right to go into the court, and the court should have the duty to dispose of it within a reasonable time. I would say "reasonable time" means within 30 days—or even 10 days. If it is a

dilatory and irrelevant move, any trained judge can see that in a matter of 2 minutes. He doesn't need to ponder on it and sleep on it and go fishing over it.

Let him decide, and if he doesn't decide, let the Board proceed.

I wouldn't say "30 days." I would say "10 days."

Mr. ICHORD. Wouldn't the witness agree that we have many precedents in the law, where this has been speeded up, that we could possibly draw from to arrive at the best language?

Judge MUSMANNO. Oh, yes. Yes, you will have no trouble in locating the precise language which would achieve this.

The CHAIRMAN. In fact, the right of review itself is limited to a matter of days or months; isn't it?

Judge MUSMANNO. Oh, yes; certainly.

The CHAIRMAN. As fundamental as that is——

Judge MUSMANNO. Oh, we have statutes of limitations all through the codes.

Mr. CULVER. But in that situation, Mr. Chairman, the burden is on the individual, if he has an appeal or if he desires a consideration by the court on an appeal, to bring it within a reasonable time.

The thing that concerns me here is that we are penalizing the individual in the case of a dilatory judge or a lazy judge, and we have no recourse to his negligence.

Judge MUSMANNO. Yes, but I am sure that as against one dilatory judge——

Mr. CULVER. And the accused is penalized.

Judge MUSMANNO. There are hundreds of perfectly conscientious, active judges, so that we have to consider the whole picture, and we can't build a system of jurisprudence around one lazy, slothful, dilatory, indifferent, incompetent judge.

The CHAIRMAN. And for that kind of judge, you have the writ of mandamus.

Judge MUSMANNO. Yes.

Mr. CULVER. What about the doctrine——

Judge MUSMANNO. And I am for the elective system of the judiciary, as we have in our State, so that he can be taken care of.

The CHAIRMAN. To which I say, "Amen."

Mr. CULVER. Judge, is that 10-day limitation 10 working days of the judge? Or how are you going to define it?

Judge MUSMANNO. For the lazy judge, there will be no "working days." [Laughter.]

Mr. CULVER. Say that you are ordered to dispose of this within 10 days, as I understand it——

Judge MUSMANNO. I make it 10 calendar days.

Mr. CULVER. Ten calendar days?

Judge MUSMANNO. Yes, because I work on Saturdays and Sundays, as well as through the week.

Mr. CULVER. You certainly aren't, probably, the "lazy judge." You are at the other end of the pole. But I think we have to think in terms other than the abnormal situation like yourself.

Judge MUSMANNO. I don't think that he requires——

Mr. CULVER. I am sorry?

Judge MUSMANNO. I don't think that the situation calls for more than 10 days of deliberation.

Mr. CULVER. Would you say characteristically that judges in America, regardless of jurisdiction, are for the most part—their dockets are incredibly heavy and their work load is almost too burdensome, in most jurisdictions?

Judge MUSMANNO. Well, I would like to say this: That a lot of crocodile tears are being shed for judges. They are overworked, they are harassed, and they are just falling over from exhaustion because of the enormous work load, and yet you will find them on the golf links, very often, during the week.

Mr. CULVER. I am sure judges are not free of human imperfections, but I think we have to talk about this in the light of the real world. Not judges that work night and day and weekends, but judges in terms of the performance of their normal duties as understood in the society.

Judge MUSMANNO. Yes. But getting back——

Mr. CULVER. My concern is if you say 10 days, most judges, you know, have as you are well aware, far more——

Judge MUSMANNO. I have it; yes.

Mr. CULVER. And to say to him that Congress would like you to turn to this matter in 10 days, but if you don't, and you say, "I am just very sorry, and in terms of equity and justice in my courtroom, even though this is a matter of presenting your pressing urgency and even though I appreciate the legislative history that gives rise to this timetable"——

The CHAIRMAN. May I suggest the consideration——

Mr. CULVER.—"I can't turn to that in fairness before I take care of these other matters, even if I work weekends."

Judge MUSMANNO. Yes, yes.

The CHAIRMAN. Would the gentleman yield? May I suggest the consideration, perhaps, I say only perhaps, of a middle figure, Judge?

The good witness, the judge, at first suggested 30 days. He amended it to 10, which raises a question in my mind. Would you two perhaps be together on this if we made it 20 days?

Judge MUSMANNO. Yes.

Mr. CULVER. Is this a political body?

The CHAIRMAN. Or—well, you certainly can't be disassociated completely from politics. When people call me a politician, I say, "I don't object to that, provided you call me a good one." [Laughter.]

Judge MUSMANNO. I am perfectly——

Mr. ICHORD. Mr. Chairman, I would go along with the 10 days or the 20 days, because I really can't see much point——

The CHAIRMAN. The gentleman is the one who prompted the whole discussion.

Mr. ICHORD. Yes; and I can't see much point——

The CHAIRMAN. I would ask him to join with counsel in trying to, as you put it, doctor up this passage a little bit; would you?

Mr. ICHORD. I shall, Mr. Chairman, but I can't see where the days are too important in the case of an indolent or a dilatory or slothful, incompetent, lazy judge. Thirty days would be just as bad for him, or a year. He might not work for a year.

The CHAIRMAN. If you set a period of limitation you have cut that out. That is the whole idea, isn't it, Judge?

Judge MUSMANNO. That is it, and if it comes within the purview of the phrase you have used, dilatory, that should stand out like a billboard to a judge when he glances at the papers.

The CHAIRMAN. By the way, let me say this, my colleague from Missouri. I have just looked at the language again. I don't find the word "dilatory" in there. I would be willing for you to put the word "dilatory" there.

Mr. ICHORD. I think we can come to the proper language.

The CHAIRMAN. I think so.

Will you consult with counsel on that?

Mr. ICHORD. Yes, sir.

The CHAIRMAN. All right.

Mr. CLAWSON. Mr. Chairman, before you leave this subject, I don't believe that the time element resolves the question in the mind of Mr. Culver. He is concerned here about the protection of the individual as far as this provision of the act is concerned. However, the observation might be made that a dilatory or a lazy judge, of course, is doing damage to any individual who might be on his docket, whether it is in this act or whether it is in the other act.

Mr. CULVER. Yes, I certainly agree with the gentleman. The example of a lazy judge, not as the isolated extreme, but I think frankly to suggest that in the context of the American judiciary it would be very difficult for any court, upon review of a lower judge's action, in this particular situation, to say confidently that this judge was negligent in not taking care of it during this timespan.

Regardless of his own individual work habits, I think that all of them are sufficiently burdened, either rightly or wrongly—at least it is accepted by every appeal court that they are. I again am concerned about the remedy you suggest. I am not interested in penalizing the judge, either by defeat at the polls, by writ of mandamus, or by criticism upon appeal.

I don't think that gets to be the problem. For all the frivolous collateral actions, delaying and dilatory tactics, which I find very offensive, and I wish we could reach the problem, what concerns me is what do we do with the meritorious one?

Judge MUSMANNO. Right.

Mr. CULVER. What do we do with the meritorious one?

Now let's hypothetically for a minute consider a case not in terms of the Communist obstruction tactics, which I can assure you are as offensive to me as anyone else. This is a country founded on laws and it is a country, too, I hope, concerned more than any other society, with justice.

What about the case where we do have a very legitimate and meritorious collateral action pending, and it goes to a judge, and 10 days, 30 days, 40 days, and he is Judge Learned Hand and he just does not get to it?

And he knows this, but he has got a workload and a docket here, and in terms of his responsibility of discharging fairness and equity before the law of the land to everybody that comes across his desk, that order of priority does not permit him to get to that case in time, and so, because of his inability, regardless of his work habits, regardless of his ability, physically, to deal with this matter and to give it

the proper judicial consideration that he deems it necessary to give it to make a judgment, then the right of that individual is lost.

Judge MUSMANNO. Yes.

Mr. CULVER. It is no satisfaction to me that that judge is reprimanded upon appeal by a higher court saying, "This is typical of the way you work."

It is no satisfaction to me that somebody can vote him out of office at the next election. That is little compensation—in fact, none—to the individual who has lost his right, a very legitimate right of appeal.

Now I realize it is a difficult problem. It is an extremely difficult problem, and I just pose that situation and I think it does merit serious and sober consideration. And the fact that we are slapping the judge's hands has nothing to do with it; it is the individual we are concerned about.

Judge MUSMANNO. Yes; but I think that you will concede that the hypothetical situation which you have very ably and excellently presented is an unusual case. You bring Learned Hand in there, and he was a very unusual judge. There are very few, and I am sorry to say, Learned Hands in the judicial world, although there are some.

I don't mean to criticize judges. As a general rule, they are very, very able, and competent men and jurists, but I don't think that you should penalize the individuals involved in 99 cases because of this one case which stands out like a sore thumb of deprivation of constitutional rights.

Mr. CULVER. My concern, Judge, would be does it defy the imagination of man to come up with a formula that would bring forward prompt consideration—I mean, if we can give it additional thought—and at the same time, wouldn't have it, implicit in it, this danger?

Judge MUSMANNO. Yes, yes. I am perfectly willing to run that risk, because eventually there is a complete review of the case. And you say it is no solace to the individual whose rights have been violated that the judge is later reprimanded, but that would be a very unusual case, and that would be the price he probably would have to pay, as against orderly procedure, for the protection and the security offered in our country.

So that I am willing to run that risk, of this one individual being harassed, embarrassed, and annoyed, so that the others, the other cases, may proceed properly and expeditiously.

Mr. CULVER. Do we have administrative evidence to date to justify that risk to an individual? Has our experience with regard to collateral actions and the ability of the court in the normal course to dispose of them promptly been so totally unsatisfactory that we are willing to run the risk of this one individual or this handful of individuals over the course of time having meritorious actions which are lost?

I am asking as a point of information.

Judge MUSMANNO. Well, Congressman Culver, you know that our law books, our statute books are just filled with statutes of limitations.

The CHAIRMAN. That is right, this is the point.

Judge MUSMANNO. My heavens, our whole system of law is based upon——

Mr. CULVER. But let's look at the burden upon the statutes of limitations. The burden on the statute of limitations is on the Government or the State to bring a criminal action within a certain period, not on the individual. Now——

Judge MUSMANNO. All right.

Mr. CULVER. Now it is on the individual, that is in the case where he has a civil action, a potential civil action, which he might wish to see ripen. Well then, he has to, within a certain time, for very excellent reasons, make known in the appropriate way before the appropriate courts, and the individuals involved, that he has this action and he wishes to exercise it.

But this is a far different situation than putting the burden on a judge, who has no interest particularly whatsoever as an arm of the State, as an instrument of the State, in terms of prosecution, or certainly as an individual with a just grievance, where he has a legal recourse under our laws to exercise it.

We are talking about the protection of this individual, and the statutes of limitations are used to bring about meritorious consideration and the cause of action is lost, as you fully appreciate, by that individual, if he does not do it within the time specified. But that is a far different thing than saying that individual's cause of action is lost if the judge does not wish to comply with the so-called statute of limitations.

Judge MUSMANNO. Yes.

Mr. CULVER. Isn't that true?

Judge MUSMANNO. That is true, but I still come back to the proposition that you are confronted with a condition and not a theory. The Board must act. The security of the Nation is involved in a given situation.

And the attorneys for the individuals being questioned go into court with no other purpose than to delay proceeding. They have, in this particular registration business, done so now for 15 years.

Mr. CULVER. Seventeen, Judge.

Judge MUSMANNO. All right, 17. And the judge, he is overworked. I will go along with that, and he just does not get to it. And because of the statute of limitations, this man's rights have in some way been infringed. Eventually he will be vindicated by the court of appeals.

I don't see that he is going to be harmed so much that we can jettison the rights in the other 99 cases, because of this one unfortunate and rarely to happen case of a judge who is so absolutely overworked or so unconcerned about responding to his conscientious duty that he will allow a simple motion made for delay to remain on his desk, gathering dust, for months or years.

Mr. ICHORD. In other words, Judge, you would say that you might feel differently in the case of a criminal proceeding, and I think we have gotten a little out of context; this is not a criminal proceeding.

Judge MUSMANNO. That is right, and we must keep in mind that here the Board is seeking to get facts so as to register these Communist organizations.

Mr. CULVER. I think you would be the first to agree that we are dealing with an area where the civil, criminal distinctions hardly apply. At best, we are in a gray area here, and certainly the social con-

sequences of having a reputation tarnished by association with the type of situation that we are involved in now, certainly, is similar if not the same as a criminal action, in terms of the sensitivity of our courts.

Judge MUSMANNO. I agree with you.

Mr. CULVER. I think it almost approximates that.

Judge MUSMANNO. Oh, yes, yes. I agree with you that a man's name is his greatest wealth and should not be tarnished unjustly.

Shall I proceed, Mr. Chairman?

The CHAIRMAN. Yes, please.

Judge MUSMANNO. Mr. Chairman, I don't know what kind of myopia afflicts those who still speak casually and lightly of Communists in America. They utterly ignore, as if it did not happen, the appalling monstrous fact that it was a Communist who committed the most infamous crime of the century—the murder of the President of the United States.

They do not seem to equate the foe in Vietnam with the Communist Party, but the fact remains that every American soldier killed in the jungles of Vietnam is done to death by a fanatic adherent of the same revolutionary policy, which is the guiding plan of the Communist Party in America.

They do not see any connection or, if they do, they assign to it no significance, that the vile creatures who burned the flag, the symbol of our Nation, in Central Park, New York, and in other places in the country, were Communists.

The Communist Party in America is an organization that has but one purpose and that is conspiratorially to aid Russia in establishing the dictatorship of the proletariat in America.

I know that for a certain period the Communist Party in America seemed to have lost its potency, but we have it on the authority of no less an informed and authoritative person than J. Edgar Hoover, Director of the Federal Bureau of Investigation, who said that the Communist Party has surfaced as a "unified, hard-hitting, well-organized conspiracy," to promote a "class revolution in the United States." He said further that "The party has been watching with uninhibited glee the rise of so-called 'new left' organizations and groups, which have culminated in 'peace' marches, protest demonstrations against American policy in Vietnam, and turmoil on college and university campuses."

He said in addition that the Communist Party has been able to put on a youth drive since it gained new freedoms of action under Supreme Court decisions invalidating portions of the 1950 Internal Security Act.

By H.R. 10390 this committee seeks to repair the holes below the waterline of the Internal Security Act resulting from some decisions of our Federal courts, and I trust that the Congress will quickly adopt the committee's recommendations.

I would respectfully suggest that the committee go further and make additional recommendations. The Federal courts have nullified State laws enacted to protect the inhabitants of those States from subversive elements and influences. Where the security of our country is involved, Congress should look with a zealously scrutinizing eye on

decisions of the courts which weaken the Nation's defenses against the Communist fifth column.

Where self-preservation is involved, Congress should draw on its constitutional powers to assert the supremacy of the people, the sovereign jurisdiction of the United States.

In the case of *Keyishian* v. *The Board of Regents*, decided January 23, 1967, Justice Clark, speaking for a minority of four against a majority of five, said, "the majority has by its broadside swept away one of our most precious rights, namely, the right of self-preservation."

The CHAIRMAN. Self-preservation?

Judge MUSMANNO. In that case, the Supreme Court, I repeat, by a vote of five to four, invalidated the laws of New York, and, of course, all the laws of States throughout the United States.

The CHAIRMAN. You are talking about the Feinberg law?

Judge MUSMANNO. Yes, which empowered school boards and school superintendents to dismiss teachers and professors who advocated in the schoolroom the overthrowing of our Government by force and violence.

The majority opinion said that there should be no infringement on academic freedom, and I submit that from the majority opinion could flow not academic freedom, but academic anarchy.

Under the ruling of the Supreme Court in the Keyishian case, a Communist who has been instructed in Moscow on how to blow up schoolhouses and assassinate the President of the United States, Members of Congress, and the Supreme Court itself may not be denied a job in the schools of the United States where he may teach the doctrine that the Government of the United States should be destroyed by armed might and physical turbulence.

The most elementary jurisprudence, to say nothing of the supreme law of self-preservation, repudiates the proposition that a Communist has the right in our schools, or anywhere for that matter, to advocate the destruction of our Government by bombs, steel, and fire when all of America's might, wealth, resources, and blood are today committed to protecting ourselves—our very lives, to say nothing of our dignity and right to worship God—from Communist annihilation.

Most of the calamities of the world and mankind since the end of World War I have been due to the Communists. There would have been no World War II if Communist Russia had not allied itself with Nazi Germany to destroy Poland, and thus break open the dikes of unrestrained sanguinary war.

I am a Justice of the Supreme Court of Pennsylvania and have worn the judicial robe now for some 35 years. I would be the last person in the world to cast any discredit on our judicial system, but I have no hesitancy in saying that what the majority of one Justice said in the Keyishian case is not a reflection of the law of the land, the spirit of the land, and the God-given right to uphold one's self-preservation.

Nevertheless the Keyishian decision is the law of the land, and I believe that this committee should recommend to the Congress that that decision be overridden. Our Government is one of checks and balances, each department checking on the actions and powers of the other two.

I believe, and I recommend, that where national security is at stake, Congress should exercise its constitutional power to veto decisions of the Supreme Court which in their natural application could alter the democratic institutions on which this Nation was founded and eventually imperil the lives of its people.

Particularly should this be true where the decisions of the Supreme Court are rendered by so scant a majority as one judge. We have heard much of the doctrine of one person, one vote, but we should not have the doctrine of one judge, one law for the United States.

I entertain not the slightest doubt that such a law enacted by Congress would be constitutional. The power of the Supreme Court to declare unconstitutional laws enacted by Congress does not appear in the Constitution.

I agree it is an inevitable and proper interpretation of the Constitution and I submit that that same interpretation would apply to congressional power to overrule 5 to 4 decisions of the Supreme Court.

As Congress may override the veto of the President on a two-thirds vote, it should have the same power, under the circumstances I have here outlined, to veto by a two-thirds vote the decisions of the Supreme Court where, I repeat, national security is involved.

I thank you.

The CHAIRMAN. Judge, I think you have made a magnificent statement and a great contribution to the purpose of this legislation. I thank you immensely.

Judge MUSMANNO. You are very welcome, Mr. Chairman.

Mr. CULVER. Mr. Chairman, may I also thank the judge for your kindness in testifying before us and your very useful observations.

Judge MUSMANNO. Thank you, and Congressman, your observations have helped me considerably in evaluating this entire situation.

Mr. CLAWSON. May I ask just one question?

The CHAIRMAN. Yes.

Mr. CLAWSON. Judge, you have indicated one apparent weakness that you felt was in section 5, paragraph 4. Are there any others in the language of this bill which you feel need correction or amplification?

Judge MUSMANNO. No, no, on the contrary——

The CHAIRMAN. And your suggestion was so valuable that it prompts me to tell you that it is going to be given very careful consideration, that paragraph 5(d) you talked about.

Judge MUSMANNO. Yes, I am very happy I could be of help. That provision hit me immediately as I read it.

The CHAIRMAN. That is why I compliment you and your balanced judgment. You have very pronounced views, but they are well balanced.

Judge MUSMANNO. Thank you very, very much.

Mr. ICHORD. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. ICHORD. Judge, I was very interested in the last two paragraphs of your statement. It is your opinion then that a proper interpretation of the Constitution would give the Congress of the United States the power to override a decision of the United States Supreme Court, the same as it explicity has in the case of a Presidential veto?

Judge MUSMANNO. By a two-thirds vote, yes.

Mr. ICHORD. You think the proper interpretation would give Congress that authority, without the necessity of a constitutional amendment?

Judge MUSMANNO. Yes, without the necessity of a constitutional amendment. I feel not only does it have that power, but I believe that conditions demand that the power be exercised. I cannot possibly accept that Keyishian decision.

The CHAIRMAN. And you would make the fraction three-fourths.

Judge MUSMANNO. Two-thirds, but even three-fourths, if necessary.

The CHAIRMAN. Instead of two-thirds, for the overruling of a veto?

Judge MUSMANNO. Yes, I would be willing to put it that way, because this would be a drastic procedure. In other words, the decision of the Supreme Court of the United States should be so appallingly offensive to our concept of what is needed to protect our country——

The CHAIRMAN. Let me say this, sir. Up until about 4 years ago, I was chairman of an active subcommittee of the Judiciary Committee called the Special Subcommittee To Study the Decisions of the Supreme Court of the United States.

One decision reviewed was the Nelson case, to which you made collaterial reference, and that decision was—let me put it this way—I found this: That once the Supreme Court reaches a constitutional issue, then we are locked in a box.

As long as it involves an interpretation of an act of Congress, there is no doubt of our ability to do something. But once the decision rests on constitutional grounds, then we are faced with the constitutional provisions regarding its amendment, and I must say that your suggestion about the power of Congress to overrule a decision of the Supreme Court has some appeal to me, but I would say in differing slightly with you that that would require a constitutional amendment. Offhand, I would say that. But it appeals to me so much that I might offer such a proposed amendment some of these days.

Judge MUSMANNO. Very well. I would be very happy if you would.

Mr. ICHORD. Mr. Chairman, while we have the distinguished jurist before us, I would like to ask the counsel one question, and perhaps would like to have the jurist comment upon what he believes we should do. Now, Mr. Counsel, section 6 of the Internal Security Act reads as follows:

> When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—
>
> (1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or
>
> (2) to use or attempt to use any such passport.

Now this bill does not touch that section of the Internal Security Act.

The CHAIRMAN. Well, that section, section 6, was declared unconstitutional, but I can say this, that I have introduced a bill to respect that court decision which would give effect to section 6.

I have a bill to try to cure that, in other words.

Mr. ICHORD. Well now, if I may proceed, this is one of the sanctions which will come into operation if the individual is found by final order of the Board to be a Communist; whether or not it will stand up is another question.

It has been stricken out.

The CHAIRMAN. Yes.

Mr. ICHORD. I thought that was the question that I had. The Supreme Court case had negated that provision——

The CHAIRMAN. Yes.

Mr. ICHORD. —of the Internal Security law. Then, Mr. Chairman, do you not feel that we should deal with this section and try to obtain the proper amendment that will stand up in this law? That is my question.

The CHAIRMAN. May I suggest something? I would be tickled to death to then submit to the gentlemen a bill that I have addressing itself to this limited point about section 6.

Mr. ICHORD. You feel that should be dealt with in separate legislation?

The CHAIRMAN. No, not necessarily. I would be so happy if the gentlemen and I could word my broad bill in such short style that maybe it could be made part of this very statute that we are trying to enact.

Do you see what I mean? Maybe we could lock my bill on to this, if it appeals to you.

Mr. ICHORD. Yes, well, let's discuss that.

The CHAIRMAN. Yes, we will discuss that.

Mr. ICHORD. I have other questions dealing with various provisions of the legislation, but I think we can take that up in executive session.

The CHAIRMAN. All right.

Mr. ICHORD. Thank you very much, Judge, for your appearance today.

Judge MUSMANNO. You are very welcome indeed, Mr. Chairman.

I feel honored to have been invited to appear here and I trust that I may have submitted——

The CHAIRMAN. It was a pleasure and an honor to have you, sir.

Judge MUSMANNO. Thank you.

The CHAIRMAN. Our next scheduled witness is the Honorable Loyd Wright, formerly president of the American Bar Association and Chairman of the Commission on Government Security.

Mr. Wright, we are delighted to have you.

STATEMENT OF LOYD WRIGHT,[1] FORMER PRESIDENT, THE AMERICAN BAR ASSOCIATION

Mr. WRIGHT. Thank you, Mr. Chairman.

The CHAIRMAN. Do you have a prepared statement?

Mr. WRIGHT. I have one that I will work from.

---

[1] *Loyd Wright*, a former president of the American Bar Association (1954–55), is the only honorary life president of the International Bar Association. A practicing attorney in Los Angeles since 1915, he received his LL.B. from the University of Southern California, a doctor of law degree from Ottawa University, and has served as president of both the Los Angeles County Bar Association and the State bar of California. He is a graduate of the Command and General Staff School at Fort Leavenworth, Kansas, served as Chairman of the Commission on Government Security (1955–57) and is presently chairman of the National Strategy Commission of the American Security Council.

The CHAIRMAN. Oh, I have it right before me. I am sorry.

Mr. WRIGHT. Yes, sir.

I notice in reading testimony that generally, the witness identifies himself.

The CHAIRMAN. And states for the record the capacity in which he appears.

Mr. WRIGHT. Yes, sir; my name is Loyd Wright. I was admitted to the bar in California June 15, 1915.

The CHAIRMAN. That is slightly before the day before yesterday.

Mr. WRIGHT. Yes, sir.

I have practiced continuously in my native city and State since then, excepting for an enforced absence during the First World War, for about 18 or 19 months, and for a year and a half when I was here acting as Chairman of the Commission on Government Security. I have had many honors from my profession, and I am past president of the Los Angeles County bar, the State bar of California, and the American Bar Association, and I am the only honorary life president of the International bar. I am not here testifying for any bar association.

I am here testifying as an individual, interested in this country, concerned, frustrated at what is going on.

Mr. CLAWSON. Mr. Chairman, may I as a fellow Californian welcome Mr. Wright here? He is well known in our community, and his opinions and philosophy and background have the respect of almost every Californian in our State, not only in his own Los Angeles area, but throughout our State and the Nation, I am sure, and I am happy to see him as a witness here today.

Mr. WRIGHT. Thank you, Congressman Clawson. Mr. Chairman and Gentlemen of the Committee: I would first like to express my appreciation for this opportunity to discuss the vital necessity of the Congress approving the substance of H.R. 10391 or H.R. 10681. Before launching upon a discussion of the merits, as I see them, may I be privileged, on behalf of the millions of Americans who seem to be inarticulate, but who thoroughly applaud the tenacity with which you, Mr. Chairman, and your distinguished associates of the committee have followed through to protect the security of our Nation against the insidious, criminal conspiracy of the gangsters of the Kremlin and others, such as Castro, who would subvert us and destroy that form of government under which our Nation has grown great and under which form of government our people have enjoyed privileges and opportunities and freedoms never before known to mankind. You have been damned by various leftist groups, but I want to assure you that an overwhelming majority of our citizens believe in you and your work, and applaud your efforts.

Not only does this committee have the confidence of the majority of loyal Americans, but a vast majority of them would hope that the Congress would increase your appropriations so that you can combat the accelerated efforts to subvert our form of government. On the scene, comparatively new, is Castro, who threatens revolutions throughout the south; Red China is exerting its influence in Africa and throughout the world; the various satellites to whom we give our taxpayers' money are furnishing arms and support to the enemy

in Vietnam; and it is absolutely essential that this committee be sufficiently financed to keep pace with the current accelerated efforts of our enemies.

The security of the Nation has been imperiled by the decisions, generally 5–4 or 6–3, of a Supreme Court which has taken to itself the prerogative of invading the legislative function of our national Government and imposing its will on the several States irrespective of the provisions of the 10th amendment. They have written into law ideological philosophies, often in complete disregard of the established law, and have well-nigh destroyed congressional efforts to preserve our national security.

As I understand it, we are here to rectify some of the tragic damage done to the statutes that have been passed by the Congress to secure our Nation against the Communist conspiracy and kindred influences.

I have with me, and seek permission, Mr. Chairman, to introduce as an exhibit, a rather detailed analysis of many of the decisions that have caused havoc to our security program, written by the Honorable Harold W. Kennedy, county counsel of Los Angeles, and which report points out in considerable detail the transgressions of the Court upon commonsense and common understanding of the law.

The CHAIRMAN. Sir, just as a matter of personal information to guide my ruling, about how many pages does that involve?

Mr. WRIGHT. What, sir?

The CHAIRMAN. About how many pages are involved?

Mr. WRIGHT. I have 12.

The CHAIRMAN. How many?

Mr. CLAWSON. That is Mr. Kennedy's——

The CHAIRMAN. I am talking about the Kennedy study.

Mr. WRIGHT. Oh, no, no.

Mr. CLAWSON. It is longer than that, I think, Mr. Wright, because I have read this, too.

Mr. WRIGHT. I don't think you will have it, as yet. It is of great length.

The CHAIRMAN. Well I would say then the document will be received and kept in our files, and carefully read and considered, but in view of its length, I don't think I would burden the record with printing it at this point.

Mr. WRIGHT. No, my purpose is to assist.

The CHAIRMAN. All right, it will be received for the file and for consideration.

Mr. WRIGHT. And I have also the copy of the report of the Special Committee on Communist Tactics, Strategy and Objectives of the American Bar Association, which also analyzes these decisions, and I will seek permission to introduce that.

The CHAIRMAN. Well how many pages in the analysis of the decisions?

Mr. WRIGHT. It is quite long.

The CHAIRMAN. Well, then I had better receive it for the file only. You see what I am after. A document of reasonable length is usually welcome to be printed in the record at the point involved, but in this case I think I had better receive them only for the files.

Mr. WRIGHT. Mr. Chairman, I am perfectly agreeable.

The CHAIRMAN. Is that satisfactory?

Mr. WRIGHT. My purpose in bringing them is to be of assistance to the staff.

The CHAIRMAN. Thank you so much, and I am sure they will be carefully read and considered.

Mr. WRIGHT. I could talk a week on these decisions to no purpose. They are all there.

The CHAIRMAN. All right.

I might suggest this bare possibility, sir, that maybe at least analysis by the American Bar committee of the documents of the Kennedy brochure referred to, that that might be made a part of the appendix of this record. But we will consider what to do with them, but in any event we appreciate the offer, and they will at the very least be carefully considered and received for the file.[1]

Mr. WRIGHT. Mr. Chairman, I have additional copies of the Kennedy report, which I will give to Mr. McNamara.

The CHAIRMAN. Thank you.

Mr. WRIGHT. And I will have sufficient copies of the other. I did not bring them this morning because they are too heavy.

The CHAIRMAN. It is all right.

Mr. WRIGHT. It is regrettable that the members of this distinguished committee should be compelled to play legal chairs with what was generally accepted, before 1952, as the greatest Court in the history of the world. It is a difficult undertaking to repair legal fences, and I commend the committee and its staff for the splendid job it has undertaken in H.R. 10390 and the identical bills introduced therewith.

One of the finest expositions on communism and the responsibility of the Congress in expressing the will of the people in dealing therewith was the report of the American Bar committee.

The CHAIRMAN. I might point out that these companion bills, 10390 and 10391, represent a completely bipartisan approach to this problem, because one of them I introduced under a new provision of the House rules permitting multiple sponsorship, and 24 Democrats joined me in doing so, and immediately the same day, the minority leader on this committee, Mr. Ashbrook of Ohio, joined by 24 Republicans, introduced his bill, and this is the greatest number of Members of the House to introduce a bill in the history of the House.

Mr. WRIGHT. I was surprised and greatly pleased at the number of people who advocated it.

The CHAIRMAN. Under the new rule.

Mr. WRIGHT. I had the privilege, Mr. Chairman, of reading the testimony of Mr. Stanley Tracy at your preceding meetings, and I would like to identify myself with that testimony and adopt it.

I find myself in complete agreement with the objectives of H.R. 10390, except for two particulars about which I will subsequently comment. In my opinion, each proposal is constitutional and valid. The question arises, however, how to compel the majority of the Supreme Court to apply the law in lieu of their personal predilections.

[1] Documents retained in committee files.

A law of course is useless if it is not enforced. Attorneys General make incredible statements that, in my opinion, run counter to fact and weaken our whole effort to contain the Communists. By way of an example, on August 17 of last year, Attorney General Katzenbach said, "There was no indication that the riots (which were sweeping the country) were planned, controlled or run by extreme left wing elements." But rather he took an academic excursion and said that the "agitators responsible for recent riots were disease, despair, joblessness, hopelessness, the rat infested housing, and long impacted cynicism."

There is ample evidence to prove to the contrary: The FBI reports on the W. E. B. DuBois Club, the statements by Director Hoover by testimony before grand juries, and by speakers known to be Communists urging people to riot, make it impossible for me to understand how a man so high in Government circles, and so important in the proper functioning of controlling this evil, could make such a statement.

I have been searching in my own mind for some way to control the explosive statements that are made both by people in Government and by people such as Carmichael or Luther King. I have not been smart enough to evolve anything that I could present to this committee, but I hope sometime someone will. The people of the Nation are entitled to have emphasized and to know what is going on, and they are kept in the dark, in spite of the great acceleration in the transmission of news.

Mr. Chairman, you and this distinguished committee are now confronted with what is going to happen when the Supreme Court gets the opportunity to distort H.R. 10390 or some of its important provisions. I took the trouble to make a compilation as of 1958 of the Supreme Court decisions, and this is what I found:

> Since 1919 through June 2, 1958, the Supreme Court rendered 84 decisions involving Communists and their subversive activities in cases where the position of the individual Judge could be determined.
>
> In the 24-year period from 1919 to 1942, when a majority of the Court were experienced Judges who had had training either on the bench or in practice, the Supreme Court accepted jurisdiction of but 11 of these cases. During that time such men as Brandeis, Cardozo, Hughes, and other great Judges were members of the Court. Of these 11 cases, 7 were decided against the Communist position and in favor of the Government and in 4 the Communist position was sustained.
>
> Since 1943, 73 cases involving Communists or subversion have been taken on and decided by the Supreme Court. Thirty-four of these were taken over during the period 1943–1953, and in 19 of these cases the Court held contrary to the position advanced by the Communists, and in 15 cases upheld the position taken by the Communists.
>
> Since October 1953 to and including June 2, 1958, or in a period of approximately 5 years under the Chief Justiceship of Warren, the Court accepted jurisdiction in the fantastic total of 39 of these cases. Thirty of these decisions, almost every one a split

decision, sustained the position advocated by the Communists, and only nine sustained the position of the Government.

In reference to the individual voting, Justice Black participated in 71 cases, and 71 times he voted to sustain the position advocated by the Communists; Justice Douglas participated in 69 cases, and voted 66 times for the Communist position; Justice Frankfurter participated in 72 cases, and his record is for the Communist viewpoint 56 times, anti-Communist 16 times; Chief Justice Warren has participated in 39 cases, and voted pro-Communist 36 times and anti-Communist 3 times.

I have not the facilities or the staff to bring this sad story down to date, but should it be brought down to date I am positive that the record would be no better than it was at the end of 1958. In fact it would probably be worse.

Mr. CLAWSON. The copy we have says 68, and you mean 58.

Just a typographical error in the copy there, I see.

Mr. WRIGHT. Oh.

Mr. CLAWSON. It may not be on yours, but it was on ours, Mr. Wright.

The CHAIRMAN. What page is that?

Mr. CLAWSON. It is on page 8, second line.

Mr. WRIGHT. I don't mean, of course, by inference to suggest that these distinguished men are Communists, but I do mean that if the Government is wrong so many times, then there is something wrong with the Government, and I have always had confidence in my Government and I still have faith in it.

We are suffering from a Court predominated by men who do not recognize the restraint that they should exercise, and that has been the constant preachment of every great Justice that has been on the Supreme Court, starting with Chief Justice Marshall and ending with Justice Black, just a few months ago.

Now there are one or two provisions that I have a question about. One was discussed by the distinguished judge. The word "misbehave." Mr. Chairman, I can just see certain other judges licking their chops when this comes before them. What is "misbehave"?

I think it is too uncertain and too indefinite to lay down ground rules. I will give you an example. A couple of weeks ago, in a Los Angeles Superior Court, a little girl came in dressed in one of these miniskirts, and the judge sent her home, told her she should not come to court unless she was properly clothed.

She came back the next day, fully dressed. In the adjacent courtroom a lady judge was having her picture taken in a miniskirt. So who is going to tell what conduct is, unless you tie it down?

I have had clients who insisted on chewing toothpicks when on the witness stand. And I think, except for my long friendship with the judge, he would probably have been held in contempt. You can go to some courts in the cow counties and they don't pay any attention.

So I would think that it be essential that either you spell out what conduct is, by reference to the judicial canon of ethics or the American bar canon of ethics for lawyers or that you have the Subversive Activities Control Board adopt rules of ethics.

It is a disgrace what has happened in this room from time to time.

I know members of the American Civil Liberties Union have, in my opinion, prompted witnesses to misbehave so that they have another bow, another arrow, when they went up to court.

You can't depend upon emotional people to conduct themselves properly in court, and this is a quasi-court.

Another matter about the bill that distresses me somewhat——

The CHAIRMAN. Mr. Wright, have you thought about a different word or a phrase to substitute for "misbehavior"?

Mr. WRIGHT. I think you have got to relate it to well-established custom of the Federal courts or State courts. We have built up over the years——

The CHAIRMAN. In other words, "the behavior shall conform to," and so on.

Mr. WRIGHT. It has got to be specific, I am afraid. Don't forget this very Supreme Court that is going to pass on this has said that the Government has got to prove that a member who joins the Communist Party knew what the purposes were.

If there was anyone old enough and smart enough to join anything who does not know what the Communist purpose is, I don't know how you would impress it on him.

In a matter of trying to cure the effect of Justice Goldberg's decision in the Aptheker case versus the Secretary of State, dealing with passports, I find no basis for the statement that a passport is a matter of right. There is nothing in the Constitution that says so. There is nothing in the Bill of Rights that says so. It is a privilege. And privileges are only handed to those who are worthy.

Now if I so conduct myself that by my associations or by my past conduct or by my past record it is indicated I want to go down to Mexico and stir up trouble, why should I have a passport?

Or take another example, take Dr. Luther King, who is advocating—I think he calls it—civil disobedience. Well, there is no such thing as civil disobedience. All disobedience of law is criminal. Associate Justice Whittaker, retired, went around the country making a speech. And he forcibly pointed that out.

But let's take King, as today. After he has been publicizing that 2 weeks hence we will have civil disobedience all over the Nation, and suppose he wanted a passport to go to Panama, Venezuela, or Mexico to stir up civil disobedience? Is he entitled to it?

I say "no." I don't think it is commonsense and I therefore urge——

The CHAIRMAN. By the way, Mr. Wright, I have a pending bill which is designed to take care of the passport decision you referred to which invalidated section 6 of the Internal Security Act. Hearings on it will be held later.

Mr. WRIGHT. I have read that bill with a great deal of interest and I approve it, Mr. Chairman.

I would like to propose, however, that every passport that is issued bear the fingerprint of the person to whom it is issued. You have to do that when you get a driver's license.

Your files are filled with cases where spurious passports were used by Communists to get into this country, and the only identification that is any good is your fingerprint.

We know what happened when these foolish people went over to

Spain and fought with the Communists. The Americans went over, and many Communists said: "Well, you let us have your passports, and we will keep them for you. And they will be safe."

Well, of course, they never got them back. And the Communists went all over their own country, found people who looked enough like these miserable passport pictures, and they all came in here to America.

So I think we are long overdue for that kind of commonsense protection. It does not, in my opinion, violate my rights.

Just as a driver's license is a privilege, so is a passport a privilege. And if you have got my fingerprints on it, I can't sneak over to Switzerland and make a deal with some foreign agent.

I believe the Congress has been remiss in not doing it, and I would like, Mr. Chairman, if the staff would peruse the report of the Commission on Government Security, in regard to certain recommendations, we recommend that the matter be transferred primarily to the Attorney General.

There are less political considerations in the Attorney General's office than in the State Department. And we recommend the fingerprinting.

I have one suggestion that I would like to make. I have tried it out on many lawyers that I think are staunch constitutional lawyers, and that is this:

First, remember that there is reposed in the Congress the full authority to set forth the rules of appeal, the jurisdiction of appeal to the Supreme Court. The right to go to the Court, as I said before, is not a matter of right. It is a grant, and it is a privilege.

You can't demand certiorari. The damage has been done, in my opinion, practically wholly by the split decisions, as a result of which the law which has been accepted for years has been changed or the concept of the Constitution that has been accepted for a number of years has been changed.

It ends up frequently that one man, who has no responsibility directly to the people, who is politically appointed, amends the Constitution, if they are five to four; or if it is a six to three, it is three men.

Yet when you have a constitutional amendment proposed, it is required that three-fourths of the States approve it before it becomes effective.

Why not, Mr. Chairman, require every decision of the Supreme Court of the United States dealing with a State constitution or the United States Constitution have the same proportion of signatures before it is valid?

I was very much interested in the argument this morning with the distinguished gentleman. I got the uncomfortable feeling we were trying to make laws and recommendations for the lowest average of citizenship and were penalizing the higher percentage.

There is, of course, no average. Everybody is equal under the law. But we have got to be realistic. We have got to recognize that the Supreme Court is filled by political favors, to appointees, and until and unless somebody has got the courage to get through legislation

or a constitutional amendment that the best shall only be appointed, we will continue to have this trouble.

Now we have run the gauntlet of it in States. We have adopted the Missouri system that works very well. We have something similar in most of the States now, where an effort is being made to take the appointment of the judiciary out of the gutter, out of the political gutter, and I don't think we are going to improve it in the Federal bench.

Both parties are at fault. The Democrats appoint nothing but Democrats, and the Republicans appoint nothing but Republicans. Once in awhile, to make a grandstand play, an administration will appoint one of the opposite party, but not very often.

It sems to me that the only way that you can safely attack this, or you will be constantly in here trying to remedy what the Court says about your bill—I think your bill is good. It should be held constitutional, but I do hope that you might attach, or get the Congress to adopt, a provision that requires three-fourths of the Court, if the case involves the Constitution.

Mr. ICHORD. Mr. Chairman, may I ask Mr. Wright a question at this point?

The CHAIRMAN. Surely.

Mr. WRIGHT. Surely.

Mr. ICHORD. Has such a resolution been entertained by the American Bar Association, Mr. Wright?

Mr. WRIGHT. That I am proposing?

Mr. ICHORD. Yes.

Mr. WRIGHT. Yes. I proposed it first about, oh, 15 or 20 years ago.

Mr. ICHORD. I know it has been proposed. Has it been considered?

Mr. WRIGHT. No; they have done nothing about it.

Mr. ICHORD. Has a formal resolution been passed?

Mr. WRIGHT. No. I am sorry to say, they are sometimes as emotional as other people. But I haven't found anyone that has a valid objection to it.

If they are going to change the Constitution, if they are going to upset the State constitutions, why in the name of high heaven shouldn't they do it by enough votes, so that it has merit?

And it doesn't depend upon just one. Look at what the Court has done in criminal activities. A policeman has got to——

The CHAIRMAN. Well, sir, the Constitution itself speaks of fractions when it comes to amending it; doesn't it?

Mr. WRIGHT. Well, if the Constitution provided that the Supreme Court should have appellate jurisdiction, as a matter of right, that would be one thing. But I have read you these figures. It shows an instability that I can't understand.

They seem to jump at a criminal case where there is a technicality, where a man, a felon—You have in Washington a fellow who has, I think, been up for murder four times, whom they let loose.

It just isn't natural. Now what does it amount to? I don't know. Why the Court has that disposition, I don't know.

Mr. ICHORD. Mr. Wright, do you feel that the members of the Supreme Court should be required to have prior judicial experience, either in the lower Federal courts or in the State courts?

Mr. WRIGHT. Very definitely. How else are you going to appraise whether he is capable or not?

Mr. ICHORD. Well, I point out to you that there are many of us who have the courage to speak out, if that's the way you put it, on the subject. But it is necessary to have a majority to pass such a law.

I know that 2 or 3 years ago I made a speech on this very subject, pointing out that at that time on the Supreme Court of the United States there was only a total of 13 years of prior judicial experience, and 8 of those 13 years were held by one man.

I believe Judge Brennan has about 8 years of prior experience on the bench. And to get that 13 years, you have to count 1 year as a justice of the peace.

Mr. WRIGHT. I think the bar is earnestly trying to get the question resolved. I know Pennsylvania, for instance, is now engaged in considering constitutional amendments.

I had the pleasure of sending to David Maxwell, who is on the commission—I guess they call it—a copy of our law where a judge may be removed.

You know, Congressman, it has worked out rather well? The statistics don't show it so well, because too many of them have resigned, but——

Mr. CLAWSON. The fact the law is there, though, is the very condition that causes this to take place.

Mr. WRIGHT. If anyone can find a valid weakness in my proposal, I would enjoy hearing it.

Mr. CLAWSON. Mr. Chairman, there are proposals for a change in the constitutional decisions where the two-thirds majority would be used, as far as the Supreme Court is concerned, and that fraction is much easier with the nine men, I am sure, than the three-fourths would be.

So it may be we would have to look at it from the standpoint of the number of men who serve on the Court and use that as our criteria.

Mr. WRIGHT. That is better than what we have now, certainly.

Mr. CLAWSON. That is right. It would be better than what we have now. There have been such proposals introduced in the House. I don't know of any in the Senate, but I know they have been in the House.

Mr. WRIGHT. My feeling is that we have been living in a fool's paradise, and we are no longer realistic people. And for myself, if they are going to fool with the Constitution, I would require all of them to sign it. But you would never get that by——

Mr. CLAWSON. You need to be practical about that, too.

Mr. WRIGHT. Yes, we have got to be practical.

Mr. Chairman, I thank you for the privilege of being here. I hope I have contributed something to your thoughts.

The CHAIRMAN. Mr. Wright, it has been a great treat to listen to you. You have made a great contribution to these hearings.

Mr. WRIGHT. I hope the Congress thinks so—and will require these fellows to put at least two-thirds of the signatures down when they are going to fool with the Constitution.

I might say, Mr. Chairman, I forgot—I think we held our meetings in this room, and I was on the commission created by the Congress to consider and recommend raises of salaries for the Congress and the judiciary.

The CHAIRMAN. That is right.

Mr. WRIGHT. I didn't want to say that first. I didn't want to influence anyone.

Is there any question, Mr. Chairman, that I might answer?

The CHAIRMAN. No, sir. You have made, so far as I am concerned, a very complete and dignified and intelligent presentation, for which I am very grateful.

Mr. WRIGHT. Thank you, sir.

Mr. CLAWSON. I have no further questions.

The CHAIRMAN. Thank you, very much, Mr. Wright.

(Mr. Wright's prepared statement follows:)

STATEMENT OF LOYD WRIGHT

Mr. Chairman, Gentlemen of the Committee, I would first like to express my appreciation for this opportunity to discuss the vital necessity of the Congress approving the substance of H.R. 10390, or alternatively, H.R. 10391 or H.R. 10681. Before launching upon a discussion of the merits, as I see them, may I be privileged, on behalf of the millions of Americans who seem to be inarticulate, but who thoroughly applaud the tenacity with which you, Mr. Chairman, and your distinguished associates of the committee have followed through to protect the security of our Nation against the insidious, criminal conspiracy of the gangsters of the Kremlin, and others, such as Castro, who would subvert us and destroy that form of government under which our Nation has grown great, and under which form of government our people have enjoyed privileges and opportunities and freedoms never before known to mankind. You have been damned by various leftist groups, but I want to assure you that an overwhelming majority of our citizens believe in you and your work, and applaud your efforts.

Not only does this committee have the confidence of the majority of loyal Americans, but a vast majority of them would hope that the Congress would increase your appropriations so that you can combat the accelerated efforts to subvert our form of government. On the scene, comparatively new, is Castro, who threatens revolutions throughout the south; Red China is exerting its influence in Africa and throughout the world; the various satellites to whom we give our taxpayers' money are furnishing arms and support to the enemy in Vietnam; and it is absolutely essential that this committee be sufficiently financed to keep pace with the current accelerated efforts of our enemies.

The security of the Nation has been imperiled by the decisions, generally 5–4 or 6–3, of a Supreme Court which has taken to itself the prerogative of invading the legislative functions of our national Government and imposing its will on the several States irrespective of the provisions of the 10th amendment. They have written into law ideological philosophies, often in complete disregard of the established law, and have well-nigh destroyed congressional efforts to preserve our national security.

As I understand it, we are here to rectify some of the tragic damage done to the statutes that have been passed by the Congress to secure our Nation against the Communist conspiracy and kindred influences.

I have with me, and seek permission, Mr. Chairman, to introduce as an exhibit, a rather detailed analysis of many of the decisions that have caused havoc to our security program, written by the Honorable Harold W. Kennedy, county counsel of Los Angeles, and which report points out in considerable detail the transgressions of the Court upon common sense and common understanding of the law.[1]

It is regrettable that the members of this distinguished committee should be compelled to play legal chairs with what was generally accepted, before 1952, as the greatest Court in the history of the world. It is a difficult undertaking to repair legal fences, and I commend the committee and its staff for the splendid job it has undertaken in H.R. 10390 and the identical bills introduced therewith.

One of the finest expositions on communism and the responsibility of the Congress in expressing the will of the people in dealing therewith was the report of the American Bar Committee on Communist Tactics, Strategy and Objectives,[1] which report resulted in resolutions adopted by the House of Delegates of the American Bar in a February 1959 meeting, and which are as valid today as when first announced.

[1] Report retained in committee files.

I seek permission, Mr. Chairman, to introduce into the record photostatic copies of the report, which contains affirmative recommendations which I believe will be helpful to the committee and your staff, and with which I thoroughly agree. I also seek permission to introduce a report which is appended to the resolutions and which is a thorough dissertation of cases which the lawyers of the Nation felt were questionable, and while the report and the dissertation cover a broad scope of the influence of communism, there are many discussions not directed to the bills under consideration; nevertheless the whole has a direct bearing upon the problems being now presented to this distinguished committee, and I believe will be most helpful as a reference topic for this committee and its distinguished staff. While this report was rendered in 1959, its reasoning and the basis of its observations are as valid today as when made.

Mr. Chairman, I have had the privilege of reading the summation of the testimony of Mr. Stanley Tracy at your preceding meetings, and I wish to identify myself with the testimony of Mr. Stanley Tracy.

Mr. Chairman, I find myself in complete agreement with the objectives of H.R. 10390, except for two particulars about which I will subsequently comment. In my opinion, each proposal is constitutional and valid. The question arises, however, how to compel the majority of the Supreme Court to apply the law in lieu of their personal predilections. A law of course is useless if it isn't enforced. Attorneys General make incredible statements that, in my opinion, run counter to fact and weaken our whole effort to contain the Communists. By way of example, on August 17 of last year, Attorney General Katzenbach said, "There was no indication that the riots (which were sweeping the country) were planned, controlled or run by extreme left wing elements." But rather he took an academic excursion and said that the "agitators responsible for recent riots were disease, despair, joblessness, hopelessness, the rat infested housing, and long impacted cynicism."

There is ample evidence to prove to the contrary: The FBI reports on the W.E.B. DuBois Club, the statements by Director Hoover by testimony before grand juries, and by speakers known to be Communists urging people to riot, make it impossible for me to understand how a man so high in Government circles, and so important in the proper functioning of controlling this evil, could make such a statement.

There are many other instances of people high in Government who have for one reason or another attempted to throw suspicion upon the causes of our disturbances, when commonsense and a little bit of bookwork would disclose Communist dictation.

Mr. Chairman, you and this distinguished committee are now confronted with what is going to happen when the Supreme Court gets the opportunity to distort H.R. 10390 or some of its more important provisions. I took the trouble to make a compilation as of 1958 of the Supreme Court decisions, and this is what I found:

> Since 1919 through June 2, 1958, the Supreme Court rendered 84 decisions involving Communists and their subversive activities in cases where the position of the individual Judge could be determined. In the 24-year period from 1919 to 1942, when a majority of the Court were experienced Judges who had had training either on the bench or in practice, the Supreme Court accepted jurisdiction of but 11 of these cases. During that time such men as Brandeis, Cardozo, Hughes and other great Judges were members of the Court. Of these 11 cases, 7 were decided against the Communist position and in favor of the Government and in 4 the Communist position was sustained.
>
> Since 1943, 73 cases involving Communists or subversion have been taken on and decided by the Supreme Court. Thirty-four of these were taken over during the period 1943–1953, and in 19 of these cases the Court held contrary to the position advanced by the Communists, and in 15 cases upheld the position taken by the Communists.
>
> Since October 1953 to and including June 2, 1958, or in a period of approximately 5 years under the Chief Justiceship of Warren, the Court accepted jurisdiction in the fantastic total of 39 of these cases. Thirty of these decisions, almost every one a split decision, sustained the position advocated by the Communists, and only nine sustained the position of the Government.
>
> In reference to the individual voting, Justice Black participated in 71 cases, and 71 times he voted to sustain the position advocated by the Communists; Justice Douglas participated in 69 cases, and voted 66 times for

the Communist position; Justice Frankfurter participated in 72 cases, and his record is for the Communist viewpoint 56 times, anti-Communist 16 times; Chief Justice Warren has participated in 39 cases, and voted pro-Communist 36 times and anti-Communist 3 times.

I have not the facilities or the staff to bring this sad story down to date, but should it be brought down to date I am positive that the record would be no better than it was at the end of 1958. In fact it would probably be worse.

Mr. Chairman, I previously stated that there were one or two provisions of the bill that I questioned. My first question refers to subparagraph (3), page 10, wherein the language states: "Any person who, in the course of any hearing before the Board or any member thereof or any examiner designated thereby, shall misbehave in their presence," etc. I respectfully suggest that this is language that the present Supreme Court would love to pass upon. What is misbehavior? Recently a Los Angeles judge sent home a divorcee who appeared in court in a miniskirt with the admonition that she properly dress before she enter the courtroom again. I have known of witnesses who have insisted on chewing toothpicks on the witness stand. I have known of witnesses being admonished by the court for chewing gum on the witness stand. I am very fearful that if the present language is preserved the Court will jump at the opportunity of declaring it vague and uncertain. Remember they have already declared that the Government must prove that a person who joins the Communist Party must understand and know that the party has as its objective the overthrow of our Government. I therefore suggest that the definition of what the committee considers misbehavior be spelled out or that the Subversive Activities Control Board adopt rules of ethics similar to the rules of the traditional judicial ethics so that the behavior of a witness or a person attending a hearing is specifically set forth. We are unfortunately dealing with an emotional people. There are members of the American Civil Liberties Union who, in my opinion, prompt witnesses to misbehave so that they can go to the upper Court and reverse decisions handed down. There are misguided people, many unwillingly carrying out the Communist philosophy who are exhibitionists and unless their conduct is prescribed in rules or in the bill we will run into trouble.

Another matter that concerns me about the bill as presently written is the matter of trying to cure the effect of Justice Goldberg's decision in *Aptheker* v. *The Secretary of State*. I respectfully suggest that the recommendations of the Commission on Government Security in reference to passports be inserted in H.R. 10390. I find no basis for the statement that a passport is a matter of right. I violently disagree with the philosophy that I can demand a passport and go to a foreign country and talk against my Government or inject myself into foreign policy decisions made by the Secretary of State. The obtaining of the passport is a privilege and, it being such, if my conduct, my associates, or my past history indicates that I could possibly be a disturbing element in the security of my country, I should not be entitled to a passport. We have tragic examples of openly advocating the overthrow of our Government by citizens traveling with U.S. passports. We have Dr. Luther King who has brought forth a strange philosophy called civil disobedience. There is no such thing as civil disobedience. Any disobedience is criminal disobedience at whatever level. Perhaps the best exposition that I have ever read or heard of is that of former Associate Justice Whittaker, who emphatically states there is no such thing as civil disobedience. With all due respect, Mr. Chairman, I suggest we are living in a fool's paradise. We are permitting people to transcend the common rules of decency in reference to our Government and nothing is being done about it. I know of no constitutional reason why the Congress should not invoke its responsibility to protect and preserve our Government, and do all those things that are necessary to stem the erosion of the fundamental principles which have been accepted ever since we became a Nation.

We are dealing with a unique problem in the history of our country and of our Court. Keeping in mind that there is no inherent right to appeal to the Supreme Court, but certiorari is a matter of grace, or favor if you will, granted by the Court, the situation becomes more alarming. The calendar is crowded, and yet on the wave of popular emotion the Supreme Court seems to jump at certain cases of certain classifications like trout jump for a fly. Special Courts

are convened, to hear cases that have a popular appeal, but the regular business of the Court drags. It took the Court 10 years to determine the constitutionality of the Smith case. It almost seems, in retrospect, that someone was waiting until assured of a favorable climate to negate the will of the people as expressed through the Congress.

A cursory examination of the security cases will show that the damage has been done by split decisions. There is reposed in the Congress sole jurisdiction to determine the appellate jurisdiction of the Supreme Court excepting as to those rare instances specifically set forth in the Constitution. And ere the Court turns loose upon an unsuspecting public any more Communist spies and traitors to our country I recommend that Congress pass appropriate legislation requiring that in any decision dealing with the Constitution of a State, or of the United States, that no decision shall be deemed effective or valid unless the prevailing opinion is signed by the same proportion of Justices as is required of the States to adopt a constitutional amendment—three-fourths. The Court has no direct responsibility to the people; it has shown its antagonism to the legislative branch of our Government. In order to support their own predilections, the majority has on numerous occasions ignored the expressed will of the Congress and has used the 1st, 5th, and 14th amendments as vehicles to pronounce ideological decisions that have no sense, or no validity in law, and unless the Congress restrains this tendency to amend the Constitution by judicial decree, it is difficult to anticipate what we will have left of our fundamental concepts so long as the Court is as presently constituted. I had hoped that new appointments would be made from sound Judges who have had experience and whose conduct, temperament, and abilities could be judged before being elevated to our highest Court, but both parties continue to play politics, which of course is contrary to every intention of our forefathers who were the architects of our form of government.

I have discussed this proposal, Mr. Chairman, with many whom I think are the best constitutional lawyers in the country, and without exception they agreed that it would be a proper and constitutional act of Congress, and sadly they agree that it is essential, under present circumstances, that this be done.

I am opposed to drastic measures such as denying the Court the right to grant certiorari. Hence the only logical, practical answer to the question that appeals to me is what I have proposed. If a decision of the Supreme Court of the United States has the effect of interpreting, or perhaps amending, the Constitution as it has been understood by the people and lawyers, then certainly we are entitled to have more than one man decide the issues. We should have the same proportion that is requisite to amend the Constitution by the States.

I thank you for the opportunity of being heard. I hope I have contributed something of substance, and I pray to God the Congress will support you in your efforts to protect our Nation.

Thank you.

STATEMENT OF A. LEO ANDERSON FOR AMERICAN VETERANS OF WORLD WAR II

The CHAIRMAN. At this point the Chair will insert in the record the statement of Mr. Leo Anderson, national commander of the AMVETS, who was to be here but couldn't physically be here.

(The statement follows:)

STATEMENT BY A. LEO ANDERSON, AMVETS NATIONAL COMMANDER, TO COMMITTEE ON UN-AMERICAN ACTIVITIES, U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman and Distinguished Members of this Committee:

AMVETS appreciates the privilege of expressing our views with respect to the intent of H.R. 10390 and other similar bills being considered by this committee.

Before taking up the specific matters which are to be considered here this morning, I would like to express on behalf of every AMVET their appreciation of the long-continued and unremitting vigilance which the Committee on Un-

American Activities has exercised in the interest of our beloved country's welfare and security. All too often the sound, constructive, and positive action taken by its members and staff have gone unrecognized and, I am afraid, unappreciated. For such satisfaction as it may be to this distinguished committee and its staff, I would like to assure you that AMVETS individually and collectively are aware of its many accomplishments and strongly support its purposes and activities.

With respect to H.R. 10390 and the associated bills, AMVETS shares fully the misgivings of those who find disquieting the renewed campaign for the abolishment of the Subversive Activities Control Board and against the purpose of these bills, which would restore a full function and responsibility to this Board under a strengthened Internal Security Act. Through the years both have suffered erosion and weakening modification, the result of a number of factors, including limiting interpretation of judicial decisions and widely varying opinions as to correct application of these decisions.

AMVETS attaches particular significance to the timing of this latest onslaught upon the Board's existence, upon a pretext such as the device of questioning particular appointments to the Board. This latest onslaught is not mere happenstance, particularly when the Board is demonstrating that it can effectively discharge its functions and responsibilities by alerting and informing the American public concerning the background, composition, actions, and sponsorship of such questionable organizations as the W.E.B. DuBois Clubs. These have been and are continuing, in every possible misleading fashion, to undermine and attack our Nation's policy and actions in our defense of the Vietnamese people against an implacable Communist organization. The people of America are entitled to know everything about them under the law.

The obvious advantage to subversive groups of whatever kind, abolishing the Board and further weakening the Internal Security Act would be, hardly needs detailed statement. The protective cloak of anonymity appears so close to being torn asunder in this case by the action of the Subversive Activities Control Board, which is the same kind of action which has had the careful scrutiny and minute consideration of the United States Supreme Court on several occasions, and the constitutionality of the act and of similar action under the act and the constitutionality of the function of revealing the true identity and purposes behind such "faceless" organizations could not be better expressed than in the words of the Supreme Court in the case of *Communist Party* v. *Subversive Activities Control Board* (367 U.S. 1) which upheld the disclosure requirements with respect to Communist Action Organizations. The Court concluded:

> "Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support * * * it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask."

AMVETS feels that the device of attacking H.R. 10390 by directing inappropriate attention to the character or qualification of individual members or proposed appointees to the Board is a transparent one. In a substantial sense, it has nothing whatever to do with the function of the Board, whose record over 17 years has been excellent, acting as it has within somewhat severe limitations. The conduct of its proceedings and its highly informative reports have provided the Nation with material it had a right to know, which was of real value and service to the development of informed public opinion and action. The continuous efforts of Communist and other organizations to hamstring its activities and to raise unending constitutional questions as to the procedures of Board functions in some areas, in all fairness cannot be attributed to the fault of the Board, for failing to accomplish more than it has.

It is both the strength and weakness of our system of law and government that in providing safeguards for the innocent it furnishes the unscrupulous and subversive possibility for prolonged legal delays. This, too, cannot be attributed to fault in either the Internal Security Act or to the Subversive Activities Control Board. It would be and is ridiculous to suggest that because legal procedures are time consuming and frustrating to those charged in carrying out their duties under the law in behalf of the Nation's security, that we abolish both law and Board. Frustrating indeed has been the record to date of the attempts of the Board to investigate and inform the Nation as to the activities of the W.E.B.

DuBois Clubs in America. Its experience shows the need for a stronger statute. It is indeed unfortunate that the Supreme Court decisions which so clearly indicated both the need and direction for amending the basic law, the Internal Security Act, have not been made in the period since 1961. As a result, the difficult processes of eliminating the identified loopholes in the law, through sound legislative drafting and enactment, has been made more difficult by the raising, one at a time, a series of related constitutional questions in case after case, as one decision disposes of previously raised questions. It is unfortunately true that in any representative, democratic form of government, such as we enjoy, the appropriate and proper functioning of any new element in our system is closely related to and dependent upon the effective, cooperating exercise and discharge of their responsibility by other related Government elements. This is nowhere so true as in the case of the Subversive Activities Control Board, which is without authority to initiate action on its own authority, but is dependent upon the Attorney General of the United States.

The recent events throughout the length and breadth of our land at least raises the question in the minds of even the most skeptical that there is a pressing need for a thorough investigation into the real underlying causes and policies being advocated; the accurate identification of both the leadership and the sponsorship, both financial and organizational, if such covert and anonymous leadership exists in a coordinated, organized, and centrally directed way. The Subversive Activities Control Board, both by experience, performance and law, is the organization best designed to undertake such a revealing study. Under an effective Internal Security Act, such as herein proposed, it could unquestionably perform a needed vital service to the Nation at a time when half a million Americans are resisting unremitting communistic aggression in Vietnam. No less should be done in the case of other subversive groups.

The experience of the Nation during and following World War II amply demonstrates the need for a strong Internal Security Act and the appropriate means to effectuate it. The record of the Subversive Activities Control Board through the years deserves the respect and support of all citizens. The Board has demonstrated its willingness and its ability, under existing handicaps, to provide some needed services; it would do immeasurably better under the proposed changes.

We wish to assure the committee and its staff that AMVETS supports fully the purpose of the legislation under consideration and is ready as a national organization of veterans who have served their country, in hot war and cold, that we stand ready to undertake with the committee any portion of the task of informing our fellow citizens, in every appropriate way, of the importance and significance of this legislation.

In closing I wish again to express my personal appreciation for the opportunity to express the support of AMVETS for a strong Internal Security Law.

Thank you.

STATEMENT OF JAMES J. DAVIDSON, JR.[1]

The CHAIRMAN. That will conclude the hearings up to this point. We may or may not—and we probably will not—have more hearings. But I want to make this statement, that this record will remain open for the insertion of additional statements for or against this proposal for an additional 12 days.

I want to comment in that connection that one of the statements I expect to receive is that of a former member, a former president, of the Bar Association of Louisiana, my very good friend, J. J. Davidson of Lafayette, Louisiana.

(Mr. Davidson's statement follows:)

[1] *James J. Davidson,* past president of the Louisiana State Bar Association, has practiced law in Louisiana since being admitted to the Louisiana bar in 1927. He is a graduate of Tulane University, having received both an A.B. and J.D. degree from that institution. Presently he is a vice president of the Council of the Louisiana State Law Institute, as well as a member of the American Law Institute and many other legal organizations.

STATEMENT BY J. J. DAVIDSON, JR.

Mr. Chairman and Distinguished Members of this Committee:

I am pleased to be accorded the privilege of making a statement in support of H.R. 10390 by Mr. Willis, which seeks to further strengthen the hand of the Federal Government in seeking to protect itself against the very real dangers posed by Communist activity in our country.

It has long been a source of distress to the ordinary patriotic American citizen that those provisions of our fundamental law which afford the individual protection against encroachment by Government on fundamental rights of the individual should be used by those whose stated objective is to destroy and overthrow our democratic system of government in order to shield them from interference in their efforts to carry out their objectives. The fifth amendment to the Constitution effectively affords protection against self-incrimination, and the present legislation presents a plan which will apparently maintain the full constitutional guaranties to our citizens, and yet, to a large extent, remove the power of the Communist Party (and those associated with it) to use it as a shield for their activities. Although it is clear that a person, or an organization, cannot be compelled to testify against himself or itself, or to give testimony which might result in his or its prosecution, it would appear that there is no reason why the provisions of this act should not be implemented so as to require the registration and publication by the Attorney General of the names of the individuals and organizations declared to be communistic and communistic-controlled. Through this means a major weapon of concealment is effectively destroyed, and the American public may be fully advised so that it can protect itself against the imminent dangers presented. The principle of "disclosure" is not a new one in our legislation, and the adoption of this principle, without any violation of the provisions against self-incrimination under the fifth amendment, would go far toward arming the Federal Government and the American people with a weapon to effectively use against our common enemy.

The spectacle of disruption, obstruction, and even violence at committee hearings in order to disrupt the activities and prevent the committee from achieving its aims has been a dark blot on our governmental shield. The present act, through the process of contempt and by placing upon the Attorney General the requirement that he proceed to prosecute those who are guilty of such action, represents much needed legislation.

Time does not permit a discussion of all of the various provisions of the bill, but it now sufficiently defines a "Communist Front" so that it would include those organizations which are operated or infiltrated by members of the Communist Party, and would to a great extent eliminate the difficult problem of developing and presenting sufficient proof of Communist control of a "front" organization to result in judicial determination and action. It likewise prevents the "stalling" of actions begun against recognized Communist-front or Communist-action organizations through the medium of dissolution of the organization involved, and permits the authorities to proceed with the action which may have been instituted and to carry it to a final determination, instead of having the action declared to be moot so that the activities conducted by that paricular organization may be simply transferred to some other media and continued.

The present bill affords a protection to the American people which is greatly needed. It requires those organizations making solicitations to the American public for funds to identify themselves as having been determined to be Communist organizations, and this should go far toward protecting the average citizen against innocent contributions to organizations with high-sounding names, which are in truth dedicated to the overthrow of our entire system.

The present act seeks to close previously existing loopholes and to make more effective the power of Government to protect itself against those who strike at its very foundation. Today, as never before in our history, is it necessary that Americans be on guard against those many forces which strike at and seek to change, modify, and even overthrow our system of constitutional government. We should all welcome legislation such as this, which seeks to reduce the dangers with which we are confronted.

I would respectfully urge the approval of this legislation and its ultimate adoption by the Congress.

STATEMENTS OF JOHN C. SATTERFIELD [1] AND PEYTON FORD [2]

The CHAIRMAN. Also, I understand the following, among others, will be submitting statements: Mr. John Satterfield, a former president of the American Bar Association and Mr. Peyton Ford, a good friend of mine and former assistant to the Attorney General of the United States under Tom Clark, then Attorney General of the United States and until recently a Justice of the Supreme Court.

(The above statements follow:)

STATEMENT OF JOHN C. SATTERFIELD BEFORE THE COMMITTEE ON UN-AMERICAN ACTIVITIES OF THE HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee: It has been my privilege to work for many years as a member of the legal profession attempting to alert the citizens of the United States to the Communist blueprint for world conquest and to Communist tactics and strategy. As president of the American Bar Association during the year 1961–62, it was my privilege to aid in the merger of two committees of the American Bar Association and to assist in initiating a program which has accomplished much, particularly in the field of education.

While working in the American Bar Association I conferred and cooperated with Attorney General Robert F. Kennedy, Director J. Edgar Hoover of the Federal Bureau of Investigation, and other Federal officers and agencies. Also, it was my privilege to sit at the conference table with lawyers from 107 nations in the Conferences on World Peace Through Law which were held by the ABA in Rome, Tokyo, San Jose, Costa Rica and Lagos, Nigeria. Thus I had an opportunity to discuss this basic worldwide problem not only with lawyers from every State in the United States, but also with lawyers from most of the nations of the free world.

In recent years the Internal Security Act of 1950 has been construed by the Supreme Court of the United States and by the courts of appeal of the circuits in a number of cases. Of particular importance are decisions of the Supreme Court of the United States in *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1 (1961); *Albertson & Proctor* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965); and *Aptheker* v. *Secretary of State*, 387 U.S. 500 (1964). Other significant decisions are those of the United States Court of Appeals for the District of Columbia Circuit in *National Council of American-Soviet Friendship, Inc.* v. *Subversive Activities Control Board*, 322 F. 2d 375; *Labor Youth League* v. *Subversive Activities Control Board*, 322 F. 2d 364 (1963); and *Communist Party of the United States* v. *United States of America*, decided by that Court on March 3, 1967.

I have examined H.R. 10390—90th Congress, introduced on May 25, 1967, by Congressman Willis and others, which I understand to be identical with H.R. 10391 and H.R. 10681 of the 90th Congress. As the committee is thoroughly familiar with the detailed amendments therein set forth, I will confine my statement to the general principles involved in this legislation.

It is my opinion that the amendments contained in H.R. 10390 are constitutional and, if adopted, will result in bringing the sections of the Internal Security Act of 1950 which are thus amended within the constitutional principles ad-

---

[1] *John C. Satterfield*, former president of the American Bar Association (1961–62) and member of the association's board of governors (1956–59), is a fellow of the American Bar Foundation, a director of the American Judicature Society and member of the National Conference of Commissioners of Uniform State Laws. He received his LL.B. degree from the University of Mississippi in 1929, an LL.D. from Montana State University in 1961, and an S.J.D. from Suffolk University in 1962. Mr. Satterfield was admitted to the Mississippi bar in 1929 and has practiced in Jackson, Mississippi, since that date. He served in the Mississippi House of Representatives, 1928–1932, and was president of the Mississippi bar in 1955–56.

[2] *Peyton Ford* was Assistant to the Attorney General and Acting Attorney General when he resigned from the Department of Justice in 1951 to engage in the private practice of law in Washington. He received his A.B. and LL.B. degrees from the University of Oklahoma in 1934 and served as assistant attorney general of Oklahoma in 1939–41. He also practiced law in Oklahoma City prior to joining the Department of Justice in 1946 as a Special Assistant to the Attorney General.

judicated by the above and related decisions of the Supreme Court of the United States and of the United States courts of appeal.

One matter of special importance is the effect of the proposed legislation setting up a procedure within the requirements of due process of law whereby the membership of Communist-action organizations may be determined through actions initiated by the Attorney General of the United States. Such procedure is substituted for that provided in the original bill which the Court has held to violate the fifth amendment. This is of great importance to the people of the United States and, in my opinion, removes from the act the requirement of self-registration held by the Supreme Court of the United States to violate the privilege against self-incrimination.

I have observed for many years fine citizens of the United States being victimized by organizations which pose as supporting worthy causes but which are, in fact, Communist-action, Communist-front, or Communist-infiltrated organizations. Such organizations use misleading publications either transported through the mails or broadcast by radio and television. It is my opinion that section 4 of the proposed legislation is not only constitutional, but is very desirable to protect citizens of the United States from solicitations by organizations which appeal to the public by high-sounding phrases but conceal the fact that they are Communist organizations.

During the 38 years that I have practiced law, my personal position has been that the power of the Federal Government should not be extended beyond bounds which are required for the protection of the citizens of the United States. In fact, I have frequently been referred to as an advocate of the somewhat timeworn phrase of "States rights." Also it has been and is my conviction that control of the activities of any citizen should be minimized and that an extension of either Federal, State, or local governmental authority should not be permitted except to the extent it is necessary to protect the common good.

It is impossible for individual citizens to investigate and determine the nature of the many and varied Communist organizations. They can be apprised of the nature of these organizations, their purposes, activities, and policies through a determination made in a proceeding initiated by the Attorney General of the United States, after thorough investigation and upon an adjudication of the facts. This is a necessary governmental function in our present society.

It is my opinion that H.R. 10390, if enacted, will fill a vital need in this tremendously important area of citizenship.

Any legislation, whether State or Federal, which permits a public official to grant immunity to a witness can only be justified by an overwhelming public need. Nevertheless, this is a necessary function of government. The desirability of such legislation has been recognized by Congress in more than 50 statutes authorizing grant of immunity to witnesses before various Federal agencies. The protection of all of the citizens of the United States is more important than the prosecution of any one or more individuals. It is necessary to grant to the proper public official the authority to determine when the national interest is at stake to the extent that it requires testimony obtainable only upon the grant of immunity.

This bill vests in the Attorney General of the United States the authority to grant immunity when he "represents that such testimony or evidence is necessary to accomplish the purposes of this title." Many vital investigations have been thwarted by the lack of such provision in the present Internal Security Act of 1950. This authority is wisely safeguarded by the proviso "That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

The numerous amendments set forth in this bill have been drawn for the purpose of meeting constitutional objections which were raised in *Labor Youth League* v. *Subversive Activities Control Board*, 322 F. 2d 364, *National Council of American-Soviet Friendship, Inc.* v. *Subversive Activities Control Board*, 322 F. 2d 375, as clarified in *California Labor School, Inc.* v. *Subversive Activities Control Board*, 322 F. 2d 393, and *Patterson, As Liquidator of the Civil Rights Congress, etc.* v. *Subversive Activities Control Board*, 322 F. 2d 395. It is also designed to conform with the rules set forth in *Blau* v. *Subversive Activities Control Board*, 322 F. 2d 397, and *Washington Pension Union* v. *Subversive Activities Control Board*, 322 F. 2d 398, all of which cases were decided by the United States Court of Appeals of the District of Columbia Circuit.

One of the objections raised to the original act was that it permitted a default judgment to be taken when respondents to a petition failed to appear. The amendment requires the Attorney General, as petitioner, to present evidence when the respondent defaults. Thus the due process provisions of the act are strengthened. The amendment protects the respondent organization and its members as well as the public, for whose protection the act has been adopted.

A block which has thwarted proper proceedings to determine whether or not an entity is a Communist organization has been a maneuver such as that adopted by the Labor Youth League. This was involved in the case of the United States Court of Appeals of the District of Columbia Circuit and appears as *Labor Youth League* v. *Subversive Activities Control Board*, 322 F. 2d 364. Communist-front organizations may be organized at will with different names and with somewhat different personnel. Hence, under the original act, when a petition is filed against such an organization for a proper determination of its status, it may then be dissolved and, as held in this case, the proceeding thereby rendered moot. Such maneuver prevents the citizens of the United States, after due process of law has been completed, from learning the true nature of the organization. This bill finds that the public interest requires a determination of the nature of an organization at the time the petition initiating the proceedings was filed against it, even though it may have been thereafter dissolved. This is essential in order that we may have an informed public. It is my opinion that the amendment meets the objections upheld by the Court in *Labor Youth League* and that the amendment is necessary to protect our good citizens from such organizations.

On the other hand, should it be determined in the proceeding that such entity was not a Communist organization at the time of the initiation of the proceedings, those who have been innocently entrapped will be protected.

As the Subversive Activities Control Board is a quasi-judicial body, it should have the right (within due process of law) to prosecute a person for contempt. The amendment establishes a proper procedure to prosecute for any contempt. It is designed to protect the due administration of the act and to prevent further delays in its enforcement. It provides that no court of the United States shall have jurisdiction to question the authority, function, practice, or process of the Attorney General or the Board in conducting any such proceeding. However, it requires that all questions concerning contempt be raised before the Board and, at the completion of the proceedings, before the court which may review the proceedings. This preserves to every individual a right to have a proper judicial review of any such matter. Nevertheless, it will be of great value in expediting proper proceedings before the Board and would prevent dilatory interruptions of a proper proceeding by contemptuous actions.

Again, through the years I have not favored vesting administrative bodies with the unlimited right to prosecute contempt proceedings. Nevertheless, the proposed amendment is a necessary protective measure. It accords due protection and full process of law to every individual through the judicial review provided in the act. It is felt that this will enable the Board to protect the people of the United States, but, at the same time, will safeguard those individuals who may be involved in such proceedings.

As I feel sure the record contains full treatment of the additional provisions of the bill, I will not detail them in this statement. They are designed to and do properly effectuate changes in the act conforming it to the decisions herein mentioned.

There has been no diminution in the threat to the national security by Communist organizations. On the other hand, the great activity of Communist China throughout the world has added to the threat which theretofore had its origin in communism of the Soviet variety. Hence, it is necessary that the Internal Security Act of 1950 not only be amended to conform to the decisions of the courts of the United States, but that it be strengthened for the protection of our citizens and of the national security. The Attorney General of the United States and the Subversive Activity Control Board must have a constitutional means to protect the people of the United States and to safeguard the national security at this critical time in history.

Hence, I hope that this committee will favorably consider H.R. 10390 and that it will be adopted by the Congress of the United States.

This, the 18th of August 1967

/s/ John C. Satterfield
JOHN C. SATTERFIELD.

STATEMENT OF PEYTON FORD, PARTNER IN THE WASHINGTON LAW FIRM FORD, AYER, HORAN AND LESTER (FORMERLY DEPUTY ATTORNEY GENERAL OF THE UNITED STATES), ON H.R. 10390

As former Deputy Attorney General of the United States during the years 1947–1951, I witnessed and participated in the passage of the original Internal Security Act of 1950. Since that time I have entered private practice and followed with interest the various court opinions which this act has engendered. I have been asked to comment upon the proposed amendments. I wish to thank the committee for the opportunity to be of assistance.

I should like to make a few brief remarks with regard to certain sections of the proposed amendment.

1. In Section 1(B) the amendment offers a more comprehensive definition of the term "Communist-front organization." The purpose of the amendment is obviously to overcome the burden imposed by the Court in *National Council of American-Soviet Friendship, Inc.* v. *SACB*, 322 F. 2d 375. The amendment recognizes the need to enlarge the definition in order to police the more subtle and shadowy forms which the Communist-action groups have taken on. Since the decision of the Supreme Court in 1961 determining that the Communist Party was a Communist-action group controlled by a foreign power, the movement has more than ever splintered into fronts that did not heretofore exist. These fronts are at the present time the primary source of party funds and party action. The criterion proposed by Section 1(B), control by one or more members of a Communist-action organization, will permit the Attorney General to register these organizations, thus exposing the nature of their operation to the public.

2. Section 4 of the amendment proposes to alter section 10 of the present act by requiring the envelope, wrapper, or container in which any publication of such an organization is transmitted to be labeled—disseminated by blank organization which has been determined by a final order of the Subversive Activities Control Board to be a Communist organization. The American public has the right to know who or what organization is sending material through the mail or soliciting its funds.

The present amendment is in many respects akin to the requirement that cigarette manufacturers place on their package the warning that "smoking may be dangerous to your health" or as has been recently suggested that "smoking has been determined by the Surgeon General to be dangerous to health." In either situation the label is not an admission that cigarette smoking *is* dangerous or that the manufacturer has determined smoking is dangerous. To the contrary, the determination to smoke or not smoke is left with the consumer—the manufacturer is merely complying with the law. Similarly, the Communist front is not admitting that it is a Communist front, but is merely putting the public on notice that it has been so determined by an independent body. The reader, fully apprised of he facts, can do as he pleases.

However, in the area of free speech requirements, such as this, we must be more precise and specific. Otherwise, such a section may well constitute a prior restraint violative of the first amendment of the Constitution. At present, I am not aware of any actual situation, so I must use a hypothetical. The X Y Z Association has been determined to be a Communist-front organization—it disseminates political and nonpolitical material. If the nonpolitical material is required to bear such a label, people to whom it is mailed may not read it As I mentioned earlier, my fears may well be groundless. However, in light of the broadened criteria for Communist front, more and more organizations previously unaffected may now be subject to scrutiny and required to affix the label.

It is my thought that the problem can be alleviated by making the label more specific; rather than Communist organizations let it be Communist-front, Communist-action, Communist-infiltrated, so that the public is aware precisely what the organization has been determined to be.

3. Mr. Justice Musmanno in his presentation expressed some question with regard to section 5(4) which states:

"(4) The authority, function, practice, or process of the Attorney General or Board in conducting any proceeding pursuant to the provisions of this title shall not be questioned in any court of the United States, nor shall any such court, or judge or justice thereof, have jurisdiction of any action, suit, petition, or proceeding, whether for declaratory judgment, injunction, or otherwise, to question such, except on review in the court or courts having jurisdiction of the actions and orders of the Board pursuant to the provisions of section 14, or when such are appropriately called into question by the accused or respondent, as the

case may be, in the court or courts having jurisdiction of his prosecution or other proceeding (or the review thereof) for any contempt or any offense charged against him pursuant to the provisions of this title."

Mr. Musmanno views the amendment as one withdrawing jurisdiction from the courts. I cannot agree, I believe that the measure is more in the nature of certain administrative rules relating to interlocutory appeals. Such provisions accord with the normal administrative procedures for court review. This amendment does not limit the right to appeal, but merely states that appeal will be available at the end of the hearing. The motivation for the amendment is obvious, to prevent time-consuming delays caused by injudicious and specious appeals.

However, this section upon reflection does contain a statement which I do not believe was intended, that is, "nor shall any such court, or judge or justice thereof, have jurisdiction of any action, suit, petition, or proceeding, whether for declaratory judgment, injunction, *or otherwise*, to question such * * *." The "or otherwise" appears to be a withdrawal of the court's inherent power to issue extraordinary writs, such as *habeas corpus*,[1] *mandamus*, *prohibition*, etc. I can only recall one case wherein this problem was raised. *Ex Parte Merryman*, 17 Fed. Cases 144 (C.C.D. Md.) before Mr. Chief Justice Taney. In that 1862 case a secessionist officer, Merryman, was imprisoned and sought *habeas corpus*. Mr. Chief Justice Taney granted the writ on the ground that only Congress had the power to suspend that remedy.

Accordingly, viewing the section merely as a procedural one prohibiting interlocutory appeals and seeking an orderly administration of justice, I have no difficulty. However, if by this section the provision seeks and intends to withdraw from the court the power to issue extraordinary writs ("or otherwise") I have difficulty with such a proposal. While the Merryman case has stated that Congress can suspend such remedies, there is no authority for a complete withdrawal of such inherent power. I am aware of the fact that certain statutes have limited the power of the Court to hear certain cases. However, these are specific limitations and no way impinge upon the inherent power of a court. I would suggest as a solution that the "or otherwise" be stricken, so that the section is solely an administrative procedural amendment.

Another thought occurs to me which I would like to mention to the committee for its consideration, that is, the basic findings and hearings which support this legislation are those which took place some time ago and which disclosed the Moscow domination and control of the Communist-action organizations and fronts. However, with the ideological split between Russia and China there are two sources of communism; does this not affect the findings? For example, the W.E.B. DuBois Clubs have asserted that they are not Communist because they do not support the Moscow line. Shouldn't the amendments try to meet this problem by a definition which would encompass the Chinese brand of communism?

Certainly even with the broader definition of "Communist front" the effect of the legislation can be stymied by a challenge that the legislation is unsupported by the findings, which are directed to Russian communism. I would suggest supplemental hearings to develop the changing face of the movement and perhaps more specifically drawn legislation to answer the problem.

In conclusion let me thank the committee for the opportunity to submit this statement.

The CHAIRMAN. And so the hearing stands adjourned until further order of the Chair.

(Whereupon, at 12:07 p.m., Friday, August 18, 1967, the committee adjourned, to reconvene at the call of the Chair.)

STATEMENTS OF U.S. REPRESENTATIVES ARMISTEAD SELDEN, DANTE B. FASCELL, AND ODIN LANGEN

After the conclusion of the hearings, the following statements were submitted for the record:

---

[1] For example, *habeas corpus* could come into play as a consequence of contempt proceedings with regard to subpenas issued.

STATEMENT OF HON. ARMISTEAD SELDEN, A U.S. REPRESENTATIVE FROM ALABAMA

Mr. Chairman, I appreciate the opportunity to express my enthusiastic support for H.R. 10390, which I cosponsored with the distinguished chairman of this committee. This legislation is designed to amend the Internal Security Act, our major weapon in the never-ending war to control subversive activities within our Nation.

Mr. Chairman, I am deeply disturbed over the lackadaisical attitude of some of our citizens concerning the threat the Communist menace poses to our democratic institutions. In this connection, I would be remiss if I did not offer my sincere appreciation to the House Committee on Un-American Activities for its work in this area. This committee has been in the forefront in the fight to reveal the concealed operations of communism and its followers, and the constant campaign of the Communist Party and its sympathizers to destroy the committee is evidence of your effectiveness.

Mr. Chairman, the basic aim of the international Communist conspiracy is the destruction of our democratic form of government. Consequently, I believe that a reliable public register of the organizations in the United States that are controlled by the Communist conspiracy, as well as a register of individuals who are Communists, is badly needed.

As is well known by the members of this committee, the Communist Party works primarily through front organizations which appear on the surface to be social, fraternal, or benevolent groups. I feel certain that the committee has evidence that hundreds of thousands, even millions, of dollars are collected from an unsuspecting public by these organizations. We need to identify these fronts so that the ordinary American citizen will be absolutely aware of where his contributions will go and for what purpose they will be used.

Mr. Chairman, as the Supreme Court pointed out in *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1, we have a multitude of registration and disclosure laws. We require agents of foreign governments to register with the Attorney General and disclose their principals and sources of income. Lobbyists are required to register with the Clerk of the House of Representatives and report funds received from their principals and their fields of legislative interest. And we have a variety of laws dealing with registration and disclosure of information by corporate entities. Therefore, there is no blanket constitutional prohibition against registration and public disclosure of certain information that is of value for the protection of our citizens.

Mr. Chairman, in closing I would like to echo the words of Mr. Justice Frankfurter, who wrote the opinion of the Court in the Communist Party case. He stated, at 95:

> "Means for effective resistance against foreign incursion—whether in the form of organizations which function, in some technical sense, as 'agents' of a foreign power, or in the form of organizations which, by complete dedication and obedience to foreign directives, make themselves the instruments of a foreign power—may not be denied to the national legislature. 'To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come. . . .' *The Chinese Exclusion Case*, 130 U.S. 581, 606."

Mr. Chairman, I appreciate your giving me an opportunity to express my support for H.R. 10390, and I respectfully urge the members of this committee to give this legislation expeditious and favorable consideration.

STATEMENT OF HON. DANTE B. FASCELL, A U.S. REPRESENTATIVE FROM FLORIDA, IN SUPPORT OF H.R. 10390

Mr. Chairman, I appreciate having this opportunity to lend my support to the measure presently under consideration by this committee, H.R. 10390. This bill, if enacted, will strengthen the Internal Security Act of 1950 by making congressional intent in this area absolutely clear, especially in relation to the activities of the Subversive Activities Control Board.

Following World War II, evidence mounted that the Communist Party of the United States and its various related organizations at home and abroad were growing in strength and in activity and that they presented a serious threat to the security of the Nation. In 1950, therefore, the Congress enacted legislation "recognizing the existence of such worldwide conspiracy and designed to prevent it from accomplishing its purpose in the United States." The Internal Security Act created the Subversive Activities Control Board and empowered it to hold hearings, upon petition of the Attorney General, to determine whether suspected individuals or organizations were in fact members of the worldwide conspiracy dedicated to the overthrow of the United States Government.

Since then, the Board has faithfully discharged its duties, investigating more than 70 persons and organizations suspected of being under the influence of international communism. The primary purpose of these investigations has been public revelation of the operations of these persons and organizations so that the American public might be in a better position to assess the insidious effect of the conspiracy and the dangers which it poses to the American way of life

In 1965, however, the Supreme Court held that the registration requirements in the Internal Security Act constituted a violation of the privilege against self-incrimination. In effect, this ruling vacated the registration orders issued by the Board against 27 individual members of the Communist Party of the United States. The precise effect of the Albertson and Proctor decisions on the powers of the Board is a moot point—but it is not our duty here today to delve into judicial intent. Our purpose, instead, is to clarify congressional intent, which has not, I daresay, wavered in its opposition to the very real danger of communism since the Internal Security Act was passed in 1950.

There have been, in recent weeks, proposals that we abolish the Subversive Activities Control Board. To do so would, in my opinion, abrogate the very principles underlying the Internal Security Act of 1950.

In February of this year, the distinguished Director of the Federal Bureau of Investigation offered the following testimony concerning racial disturbances in our cities to a House subcommittee: "Communists and other subversives and extremists strive and labor ceaselessly to precipitate racial trouble and to take advantage of racial discord in this country. * * * The net result of agitation and propaganda by Communist and other subversive and extremist elements has been to create a climate of conflict between the races in this country and to poison the atmosphere."

We have this past summer witnessed racial riots, terrifying in their destruction of life and property. If it is determined that the seeds of violence are planted by an organized conspiracy to destroy the very foundation of this Nation, that conspiracy must be dealt with.

I therefore urge approval of H.R. 10390, which will amend and strengthen our internal security program and equip the Subversive Activities Control Board to better inform the American public of the dangers of subversion from without and from within.

STATEMENT OF HON. ODIN LANGEN, A U.S. REPRESENTATIVE FROM MINNESOTA

Mr. Chairman: I wish to thank you and the committee for this opportunity to express my views in support of pending legislation to amend certain provisions of the Internal Security Act of 1950 relating to the registration of Communist organizations.

In order to maintain our vigilance over subversive organizations, we must strengthen our Nation's major antisubversives law now. Accordingly, I urge the committee to approve legislation, as introduced by many of us in the House, that contains the necessary amendments to restore the effectiveness of the Internal Security Act.

This pending legislation would (1) strengthen provisions of the Internal Security Act weakened by recent Supreme Court decisions, (2) require organizations found to be Communist to identify themselves as such when soliciting funds, and (3) grant additional powers to the Subversive Activities Control Board. Moreover, the Attorney General would be required to maintain a "Register of Communist-Action Organizations." Groups thus cited would have full legal recourse through appeal.

The American people are sick and tired of the extent to which subversive elements in this country are permitted under law to continue their insidious activities free from public knowledge and punishment. That is why I urge the House Un-American Activities Committee to approve the antisubversives bill which many of us are sponsoring in Congress.

This Nation should stand united in protecting itself from those individuals and organizations who would subvert it.

By hitting hardest at subversive elements aiming to destroy democracy in this country, Congress will help preserve freedom and representative government.

Thank you again for your courtesy in permitting me to convey my views to the committee on this vital matter.

APPENDIX

Material submitted by Stanley J. Tracy for insertion in the record.

★ THE FACE OF THE ENEMY

By HAROLD RANSTAD

A graduate of the University of Minnesota and a member of the Minnesota bar since 1927, Mr. Ranstad retired from the FBI in 1955 after more than 21 years' service as a Special Agent. He supervised FBI security-type investigations at the Bureau's national headquarters from 1940 to 1947. Since retiring from the FBI, he has served as Assistant Counsel with the Senate Select Committee on Improper Activities in the Labor or Management Field and with the Senate Permanent Subcommittee on Investigations and as Attorney with the Commission on Government Security and the House Subcommittee on Legislative Oversight. He contributed "90 Miles to Moscow" in the April, 1961, issue of Industrial Security.

Since that fateful night in 1917 when they took advantage of a war-weary, confused, and demoralized people to impose upon them a new kind of tyranny, worse even than those of the Khans and the Tsars, the Marxist conspirators in the Kremlin have come a long way on the road to their ultimate goal—the conquest of the entire earth and the subjugation and enslavement of every man, woman, and child upon it.

There is no need to dwell upon their progress, nor to describe in detail the enormous power to which they have attained or the prospects they possess for further advances. The facts are obvious and well known.

Although, as the sole proprietors and absolute masters of a vast and powerful empire, they have managed to acquire an aura of legitimacy and respectability, they are, beyond doubt, the most potent force for evil the world has ever seen.

Why has so small a group of evil and determined men been permitted to become so powerful and to advance so far toward complete consummation of so monstrous a crime against all humanity? Have we thus

far been striking blindly in the dark against an unidentified enemy?

It is commonly said that the enemy is well known, that the enemy is communism, or international communism, or Marxist communism. But is this identification adequate? Is it sufficiently specific and precise?

Communism, like socialism, is only a theory, or bundle of theories. Neither was invented by Karl Marx. Both have been defined endlessly, in hundreds, if not thousands, of ways, but, essentially, they are political and economic theories of social organization based on common or collective ownership of goods, or property. For all practical purposes, they are as alike as tweedledum and tweedledee. Marx used the words interchangeably and, when he and Friedrich Engels formed their minuscule "party," they called it the "Communist Party" because there was already a "Socialist Party" in existence.

The real enemy free men face today is not communism or socialism, in the original sense of the terms, but a small gang of conspirators, with helpers all over the world, who have adopted, modified, and applied in their own interests a scheme and technique devised by Karl Heinrich Marx for the selfish purpose of transforming and elevating himself from the bottom to the top of the social heap by turning society upside down. The scheme failed to perform the desired miracle for its originator, partly, perhaps, because his contemporaries were too well acquainted with his character, his physical and mental condition, the position he occupied in society, his unsavory record, and his real purposes, to take him seriously.

They knew how egotistical, arrogant, and overbearing he was, and how contemptuous of his fellow men, all of whom he regarded as his inferiors. They knew him to be envious, spiteful, mean, and vindictive; a man full of hate and spleen. They knew him as a hypocrite and a cynic, a poisonous gas bag whose professed desire to ameliorate the "ever-increasing misery" of the workers, or "proletariat," under capitalism was as fraudulent and self-serving as his "scientific socialism" and his "dialectical materialism." They knew him as an impractical and deceitful schemer and an implacable and unscrupulous enemy to all who disagreed with him or attempted to compete with him or to expose him.

His record, too, was well known to them. They were well aware of his atheism, his hatred of God and of anything pertaining to Him or to religious faith or worship and of his tantrums of uncontrollable rage at their mere mention.

They knew that, as Editor-in-Chief of the Rhenish Gazette, he had argued and written against socialism and that he had, at that time, regarded socialism as nonsense—a dangerous kind of nonsense because it cannot be killed with bullets.

They were aware of the brevity of his tenure as editor of the Gazette and of his impractical, unrealistic, and erratic behavior in venting his hatred of God in its columns in an attack on the government for contemplating a new divorce law which he interpreted as an attempt to bring Christianity back into the state. As a result of his outburst, the paper he was hired to preserve

by keeping blasphemy from its pages was forced to cease publication and he lost his job.

They knew, too, how he had subsequently betrayed his friend and benefactor, Dr. Arnold Ruge, after the latter had made him his co-editor of the German-French Yearbooks, a new publication which was to have its home in Paris. In his despair and bitterness over the loss of his job at the Gazette, Marx had cautiously let it be known to some of his associates (his friendships, except for that with Engels, never ran deep or lasted long) that he had become a socialist. Knowing that Ruge strongly disapproved of socialism, he neglected to inform him of his new-found interest in it. When Dr. Ruge was unable, because of illness, to participate in getting out the first issue of the Yearbooks, Marx took advantage of the situation to use the publication as a sounding board for a new brand of socialism he had conjured up to serve his own interests. Because of the inflammatory and revolutionary material inserted by Marx, the first issue of the Yearbooks was also the last. Marx was consequently stranded in Paris without employment and without funds. To add to his difficulties, his wife, a woman of the Prussian aristocracy whom he had married while he was penniless and unemployed and a guest under her mother's roof, was pregnant.

His contemporaries knew, too, that his positions with the Gazette and the Yearbooks were the only ones he ever held, except for occasional part-time jobs with a few newspapers as correspondent.

They knew his entire record was one of failure and that, from the time he was 26, he never had full-time, remunerative employment, but existed on collections, subscriptions, and charity.

They were aware of, and many had been subjected to, his vicious attacks on all who dared to disagree with him or who might be or become his rivals or competitors in the struggle for control of the socialist movement. Invariably, his weapon in these clashes was character assassination. When there were no factual bases for villification and calumniation, Marx could be counted upon to invent fictions and palm them off as facts.

They knew he was inordinately fond of wine and that he was frequently ill, suffering at various times from boils, carbuncles, abscesses, liver ailments, neuralgia, severe headaches, and insomnia. Had they known more about mental illnesses, they might have recognized symptoms of paranoid schizophrenia in his delusions of persecution and of his own superior ability; in his fierce rages; in his violent oscillations between excitement, buoyancy, or optimism at one end of the arc, and listlessness, indifference, or despair at the other; in his unpredictable, incoherent, and unrealistic behavior; in his headaches and insomnia; in his lack of contact with reality and with his environment; in his lack of interest in people and things; and in that progressive deterioration of personality which began so early in his life.

Finally, Marx's contemporaries knew him as a member of the lowest stratum of society—a perennial pauper without visible means of support, so far removed from

reality that he did not even recognize his obligation to support his family, permitting them to exist in poverty, squalor, hunger, illness, and misery.

Had Karl Marx been a practical man, he would have sought and clung to remunerative employment as the means of improving his family's economic and social positions. But he was not practical. He sought a short cut to power, fame, and plenty. He thought he had found it in the socialist movement, which he mistakenly believed was gaining ground so rapidly that it was destined to replace capitalism in the immediate future. He decided to ride the rocket of socialism into the stratosphere of a new society, to permit socialism to elevate and transform him from a penniless pauper to potentate with powers unlimited and glory unmatched. Here began that cult of the individual, or cult of the personality, of which Lenin, Stalin, and Khrushchev have been the beneficiaries. The cult of Stalin endured so long and left so deep an imprint upon the entire Marxist Empire that Khrushchev found it necessary to destroy it to make way for his own. This he attempted to do at the XXth Party Congress. His method was the one developed to such a high state of perfection by the original Marxist himself—character assassination. In this instance, there was no need to fabricate bases for the attack. Stalin was a beast, insufferably suspicious, brutal, egotistical, cruel, crafty, despotic, and bloody, and Khrushchev proved himself an apt pupil of Marx's in the thorough manner in which he exposed to the inner circle of the Marxist conspiracy the true nature of the "superman possessing supernatural characteristics akin to those of a god" who had so long been hailed and worshipped as a great leader and teacher and the greatest of living Marxists. Khrushchev did not see fit to expose Stalin's true character to the world, or even to the people of the Marxist Empire, at that time.

But, if he thought he had destroyed the Cult of Stalin, he was mistaken. Stalin was still worshipped as the true god of Marxism by many who rejected Khrushchev's claim to Marxist deity, especially Marxists in Red China and little Albania. By the time the XXIInd Party Congress was about to convene, it had become apparent to Khrushchev that the Cult of Stalin had not only survived but had gained such vigor and strength again that it was seriously threatening his own. This time, the Stalin Cult must be finished forever and in such a manner that the whole world, including the people of the Marxist Empire, would be shocked and horrified. The evils of Stalin and his executioner, Lavrenti Beria, were again dragged out and put on display, this time for the whole world to see and abhor. Molotov, Malenkov, Kaganovich, and Voroshilov, who still worshipped at the shrine of Stalin, were denounced as "anti-party" and disgraced. But the lengths to which Khrushchev was prepared to go to preserve the Cult of Khrushchev were fully revealed only when he ordered the body of Stalin removed from its place beside that of Lenin in the Marxist tomb of dead gods and ignominiously buried in obscurity beneath the Kremlin wall.

It is scarcely possible that Khrushchev does not real-

ize that Marxism *is* a cult of the individual, devised by Karl Marx to transform and elevate Karl Marx into a "superman possessing supernatural characteristics akin to those of a god."

In order to exploit the socialist movement, Marx must gain complete and uncontestable control of it. But which socialist movement should he choose? There were almost as many brands of socialism and as many socialist movements as there were socialists. Socialism was almost exclusively the creation and preoccupation of the intellectuals.

Undaunted by the actually unpropitious state of affairs, Marx, with the assistance and support of his *alter ego,* Friedrich Engels, launched his own brand of socialism, his own socialist movement, and his own socialist party.

Marx's brand of socialism was not concerned with truth nor designed to benefit the masses. Masquerading as history, science, and philosophy, it was a false and deceptive recital of the "evils" of capitalism and the inevitably "ever-increasing misery" imposed by it upon the working class, coupled with a hypocritical and empty promise of a paradise on earth to be achieved by smashing the old order, abolishing private property and capitalism, and giving Karl Marx *carte blanche* as the architect and master of a new social order. Marx, not the workers, was to be the beneficiary of this grand social upheaval, though he was careful, of course, to create the opposite impression in public.

Marx's contemporaries were not impressed with his "science" and "philosophy." They were aware that everything he wrote about socialism was for the purpose of exploiting the movement; that it was all written after he had cast his lot with socialism as the means of annihilating the society and the "oppressors" and "exploiters" he blamed for all his failures and misery, and of elevating him to dominance and limitless power in a new order; and that his writings, though apparently learned and scholarly, were self-serving propaganda and not worthy of serious consideration. Some of them perceived that, if Marx's socialism prevailed, the result would inevitably be a police-state tyranny.

The heritage Marx left to posterity was an evil and dangerous plan and technique for seizing and holding power by transplanting to the field of politics a combination of the methods of the confidence man and those of the armed thug.

His "scientific socialism" and "dialectical materialism" correspond to the "spiel" of the non-political confidence man, to the buildup, blandishments, and false pretenses by which he prepares his "mark" for the "take." The force, violence, and sustained terrorism of his technique correspond to the methods of armed and desperate gangsters.

The working class, or "proletariat," as he called it, was his "mark." To exploit the workers for his own selfish ends, he tried to convince them, among other things, that capitalism could never change; that their misery, already great, must inevitably and progressively increase under capitalism; that forceful and violent revolution, the smashing of capitalism, and the building

of a socialist society on its ruins were indispensable to their liberation from misery, oppression, and exploitation; that the end they sought justified the employment of any and all necessary means, illegal and criminal as well as legal and moral; that all history is the record of a class struggle between the proletariat and the capitalist class, a struggle destined inevitably to end in victory for the proletariat and annihilation of the capitalist class; that capitalism carries within itself the seeds of its own destruction, consisting of the proletariat, which had been brought into existence by the capitalist class, and the "forces of production," which must eventually outgrow capitalism and "burst it asunder"; that it is the "historic mission" of the proletariat to rise up against and destroy capitalism; that, in the accomplishment of its mission, it must be guided and led by "science" and "philosophy"; and that the communist party must be the "vanguard of the proletariat." Naturally, Marx intended to be the vanguard of the vanguard, but the "revolutionary situation" always developing just around the next corner failed to materialize in his lifetime. In fact, the kind of revolution he desired has never occurred anywhere. Though parts of his "scientific socialism" were in irreconcilable conflict with other parts, these inconsistencies and contradictions did not trouble him; he was promoting, not the advance of learning, but a revolution.

The workers, with but few exceptions, have always been, then and now, too discerning to be taken in by Marx's false pretenses, crocodile tears, and promises impossible of fulfillment.

The Bolshevik coup of 1917 was accomplished not by a proletariat indoctrinated with Marx's "scientific socialism," but by a small, closely knit, carefully trained, and strictly disciplined gang of professional revolutionaries organized and led by that master dissembler and opportunist, Vladimir Ilich Ulyanov, alias Nikolai Lenin. There was practically no proletariat, as Marx defined the term, in Imperial Russia. The February Revolution which dethroned the Tsar and established the Provisional Government was a peasant revolt rather than a proletarian uprising. Unfortunately for itself, the Provisional Government was weak and vacillating and was only one of two governments exercising power in Petrograd, the other being the Petrograd Soviet. This presented to Lenin a perfect opportunity to divide and conquer which he did not neglect to exploit. His coup, the so-called October Revolution, overthrew the only government with any semblence of democracy ever seen in Russia.

Lenin's coup gave form and substance to a new force of darkness and evil and gave it a seat of power among nations. Its true nature was not perceived and the opportunity presented by the ensuing civil war and the hostility of masses of the people to the new tyranny was not utilized by the great world powers to step in and destroy the infant monster which was later to unsettle, confuse, divide, and threaten them, and to banish peace and security from the earth.

With the consolidation of the Bolshevik power and its forcible and bloody extension to all parts of Russia, the Marxist conspirators entered upon an entirely new phase

and underwent a complete change of character. They had been scattered, discredited, impotent, and without a secure base of operations anywhere. They had become powerful and securely based. Their weapons for further conquests now included all the apparatus and machinery—military, political, diplomatic, and economic—of a great world power. Imperialism, colonialism, diplomacy, trade, and conquest by force of arms had all been added to the means at their disposal.

Marx was the prototype of a new kind of criminal, the political criminal, or politicriminal, if a word may be coined to distinguish them from the common garden variety of criminal whose activities are necessarily confined within narrower and more conventional forms.

These politicriminals collectively are the enemy we face today. The organization through which they operate is the Communist Party, with headquarters in Moscow and branches throughout the world. Their "front" is the Red Empire—the mis-named Union of Soviet Socialist Republics and its satellites and colonies.

Unfortunately, the membership of their Party includes many whom they have deceived, misled, and exploited, and who are as much their victims as the peoples in the Red Empire whom they have subjugated and enslaved. Some of these unfortunates sincerely and fervently believe that in communism, as they understand it, and in the communist movement and party, lies the only hope for the salvation of man and his deliverance from war, want, and inequality. Their mistaken zeal and fervor create and foster the false impression that communism is a religion. It takes much more, however, than misplaced zeal and fervor to make a religion, and a false ideology born of hypocrisy and cynicism can never qualify.

Communism must be destroyed, but this does not mean communism as a political and economic theory. A theory cannot be destroyed; it can only be shown to be false, invalid, or impractical. But communism as a conspiracy and a criminal undertaking and adventure to seize and hold limitless power by fraud, force, violence, and terrorism can and must be destroyed in order that freedom, peace, law, justice, and decency may be restored to their rightful places on earth.

Communism in this sense is neither true communism nor true socialism: it merely exploits them and holds them out as lures and baits to trap the unwary into joining or supporting it and as window dressing to divert attention and opposition from its true purpose. Since communism in this sense was conceived by Marx and developed by the Bolshevists—Lenin, Stalin, Khrushchev, and others—it would be better and more accurate to call it Marxism-Bolshevism, or simply Marxism. To call it by the name of communism is to play into the hands of the Marxist conspirators.

Neither socialism nor communism, in the original sense of the terms, prevails behind the Iron Curtain. The economic system, or order, is state capitalism; the social order is one of slavery for the workers; and the state is the private property and tool of a handful of despots, nowhere responsive or amenable to the will of the people, the workers, or the "proletariat."

The myth that Marxism and Marxism-Bolshevism are socialist and communist ideologies and movements is only one of many propagated by the Marxist conspirators to serve their own ends. Others include the myths that it is "liberal," "progressive," "left-wing," "peace-loving," "humanitarian," "scientific," "and "inevitable," and that it is the invincible champion of labor, the poor, the downtrodden, the dispossessed, the oppressed, the exploited, and all victims of imperialism, colonialism, discrimination, and injustice—in fact, all things to all men, except the wicked, war-mongering, imperialistic capitalists.

Whether it is, as it claims to be, politically "leftist," depends on what is meant by the term. If "leftist" is equated with liberalism and progressivism, theoretical socialism and communism can, perhaps, be classified as "leftist," although it is difficult to see how either can operate as an established social order without regimentation and a secret-police state. Marxism, in the guise of socialism and communism, certainly cannot qualify as "leftist" liberalism and progressivism. The only progress it has made has been backwards toward the violence, tyranny, and slavery of the Dark Ages.

Marxism-Bolshevism as an active conspiracy pursued by purposeful, planned, systematic, and sustained activities can be destroyed by permanently restraining those who have breathed life into it and are exploiting it, just as Fascism and Nazism were destroyed by identifying them with the arch-criminals, Mussolini and Hitler, and by removing them from the scene.

We have no quarrel with the people behind the Iron Curtain. Our quarrel is with the governments imposed upon the people without their consent and against the will of nearly all of them, and can be settled by turning the tyrants out and by a transfer of their power to the people with the right to determine for themselves how they will be governed. Primarily, the task must be accomplished by the oppressed people themselves, but the Free World has an obligation and responsibility to assist them in every way within its power.

War is not the answer. It would only afflict the innocent more than the guilty and inflict unbearable suffering and loss of life on both sides. But, though we do not seek and do not want war, we must maintain such military strength and such a state of alertness, readiness, and preparedness that it would be suicidal to attack us. Secure in our own strength, we can work to mobilize all peoples everywhere against everyone's enemy—the Marxist politicriminals.

Anti-communism, when applied to the fight against Marxism-Bolshevism, ought not be regarded as controversial, nor should it be thought of as belonging to the right or extreme right. It should be the concern of all non-Marxists, right, left, and center.

We do not tolerate or compromise with non-political criminals, nor speak of peaceful coexistence and competition with them. Why should we accord preferential treatment to a political variety whose victims are numbered by the million and whose crimes are infinitely more heinous?

Reprinted in the public interest by
CITIZENS ALERT
P. O. Box 230, Corpus Christi, Texas

A LESSON MANY PEOPLE NEVER LEARN

IGNORANT OF THE TRUE MEANING OF COMMUNISM AND HOW IT WORKS, MANY AMERICANS UNWITTINGLY HELP THE REDS IN THEIR PLANS TO ENSLAVE THE WORLD.

By Harold Ranstad

Almost without exception, Americans are anti-communist. They abhor communism because, wherever it prevails, it destroys liberty, freedom of expression and action, self-reliance, private enterprise, self-government, freedom of worship, morality, and human dignity. It governs by force, fraud, and fear and, in the name of enlightenment and progress, imposes, on those who have succumbed to its tyranny, slavery and dehumanization.

Everything for which Americans stand and which they hold essential to a life worth living is condemned and derided by communism.

Yet, although Americans generally have no use for communism or communists, many good Americans protest loudly and vigorously whenever an attempt is made to expose and discredit communists.

All such attempts are denounced as witch hunting, intolerance, bigotry, know-nothingism, and worse. No sooner is an anti-communist organization launched than it is attacked, calumniated, reviled, hissed at, and spat upon. The same is true with respect to individuals from the moment they assail the twin evils of communism and communists.

There have, of course, been anti-communist individuals and organizations that have merited censure because they have been self-serving and self-seeking, extreme in principles or methods, insincere, or otherwise unworthy. The attacks on anti-communists have not, however, been confined to the unworthy among them. They have not been sniping operations to pickoff carefully selected targets, but broadsides fired at all who have dared in any way to contest the progress of the Marxist juggernaut.

Why do so many good Americans (perhaps most of whom would prefer death to existence in a communist police state) join in the never-ending campaign to discredit and destroy those who, with greater or lesser skill, are fighting their battles against communism for them and, in the process, risking their reputations, their livelihood, their health, and even their lives? How is this phenomenon of perversity to be explained?

Intolerance of communism is denounced, yet intolerance of fascism and nazism is expected — even demanded. Rightist tyranny is feared and hated; leftist tyranny is somehow regarded as liberal and, therefore, tolerable. Communism is generally classified as leftist, yet, in truth, it is on the right — the extreme right — because repression, regimentation, terror, and tyranny are not progressive or liberal; they are reactionary. Mr. Herbert Morrison, then Deputy Prime Minister of England, said, on January 11, 1948, that

he had never admitted, "and I admit it less and less, that the Communists are on the left. They are on the right."

A great philanthropic foundation may spend millions of good, capitalist dollars promoting tolerance for communism, but it is safe to assert that it would not part with the thinnest dime to promote tolerance for anti-communism.

In October, 1951, the Fund for the Republic was authorized by the Ford Foundation and given one million dollars. An additional sum of 14 million dollars was donated to the Fund by the Foundation in February, 1953. This huge sum of 15 million dollars was to be used to finance "activities directed toward the elimination of restrictions on freedom of thought, inquiry, and expression in the United States, and the development of policies and procedures best adapted to protect these rights in the face of persistent international tension."

The Fund for the Republic headed by Robert M. Hutchins, a prominent educator and former chancellor of the University of Chicago, published a report on May 31, 1955, in which was stated that, since most of the pressure on our civil liberties has resulted from fear of communists in America, the Fund had financed a study of the official records bearing on communist activity under the chairmanship of Professor Samuel A. Stouffer of Harvard University. The report of the Fund stated that:

In order to discover what the attitudes of the American people toward Communists and radicals were, the Fund made an appropriation for a national opinion survey by a committee under the leadership of Professor Samuel A. Stouffer of Harvard University, which has resulted in a book, "Communism, Conformity, and Civil Liberties." Mr. Stouffer shows that the American people, at the date of the study, were remarkably intolerant of minority views.

The American people have been called to task frequently by eminent and respectable authorities in government, education, religion, and other vocations for their intolerance toward new, unpopular, radical, or bizarre ideas and those who espouse them, including, of course, communism and communists. Dr. Hutchins went so far, in his report of May 31, 1955, as to proclaim that, "The most encouraging aspect of . . . (Mr. Stouffer's) findings was that young people, better educated people, and 'community leaders' were more tolerant that the cross-section of the population."

Supreme Court Justice William O. Douglas, in an article in the *Columbia Law Review* stated, in 1959, that, "The American reputation for intolerance has grown alarmingly in recent years." He also proclaimed, "The witch hunt has done us incalculable damage abroad."

Although he did not once mention communism or communists by name, Chief Justice Earl Warren, in a speech at Washington University in St. Louis, Missouri, February 19, 1955, pleaded for "the participation by all," which certainly includes communists, "in the life and government of the nation," despite the perfectly obvious fact that communists participate in non-communist activities, governments, and organizations merely to divide and conquer, rule or ruin.

Those who advocate tolerance for it invariably speak of communism

as "thought," "ideas," "views," a "philosophy," or an "ideology," totally ignoring the fact that it is also a conspiracy, a technique, a force, and, in essence, the application of illegal and criminal means and methods in the domain of politics — a political confidence game supported by force, violence, and terrorism. More than 40 years of applied communism testifies beyond cavil that it is the grossest evil ever visited on man.

None will deny the value or importance of tolerance, but, like everything else, it can be carried to extremes. The tolerance of even the most forbearing gives way at the sight of a rattlesnake in the nursery or a rat in the pantry.

Many who should know better refer to communists in the United States as "American communists" and to their organization as a "political party." They appeal to us to treat the communists in our midst as fellow Americans and their "party" as just another American political party. They ask us to accept them and to include them in every aspect of our national life.

It is abundantly clear that there is no such thing as an "American communist." Communists have no nationality, and communists in the United States feel they owe no loyalty to the United States Government. Communists are internationalists, dedicated to the destruction of all non-Marxist states and the establishment of a universal Marxist state. The Communist Party, U.S.A., is not a political party. It is part and parcel of the international communist apparatus, wrapped in the flag of the United States and hiding behind its Constitution for the purpose of destroying it.

Certainly, we should treat all our fellow Americans alike, but the communists in our midst are not our fellow Americans. Nothing we can do will make fellow Americans of them, for they will not have it that way. As Lenin said, "I spit on Russia," so the communists in the Unated States say, "I spit on America."

It has been argued that we in America can afford to tolerate the communists and permit them to advocate overthrow of our government by force and violence because they have no chance whatsoever of succeeding in their advocacy of such subversion. Associate Justice William O. Douglas, in his dissenting opinion in *Dennis, et al., v. the United States*, 341 U. S. 494, argued "Communism in the world scene is no bogeyman; but Communism as a political faction or party in this country plainly is. Communism has been so thoroughly exposed in this country that it has been crippled as a political force. Free speech has destroyed it as an effective political party. It is inconceivable that those who went up and down this country preaching the doctrine of revolution which petitioners espouse would have any success."

Such arguments ignore the indivisibility of the communist menace. There are not two communist threats, one domestic and harmless and the other foreign and formidable. There is but one threat, an international enemy with a dangerous foothold inside our gates.

There are those who say we have a "better mouse trap" than the communists; all we need do is sell it. We only demean ourselves and show a lack of confidence in our way of life, they say, when we attack communism and expose communists. Let us save the breath we might expend fighting communism to sell our own superior way of life.

The argument might be sound if our problem were simply that of selling our product in fair and open competition with the product offered by the communists. Unfortunately, that is not our problem at all. Let us suppose, for a moment, that the communists were to offer to enter into a fair, open, and peaceful competition with us, they to attempt to sell their way of life and we ours. In any such competition, they would regard fairness as an anachronistic bourgeois concept which went out of style with Karl Marx.

"Open competition" they would define as a competition in which the identity of the competitors was known, but the resort to secret, underhanded, and illegal tactics was not barred — to them.

The Marxist conspirators do not propose to permit any people to choose freely between communism and any other way of life. Competition, in their view, is only something to be stamped out, the sooner the better. It is their unswerving and immutable purpose to spread communism throughout the earth and to establish and maintain a universal "Soviet" state. They have no intention of consulting their intended victims as to their wishes in the matter. They will gain their way by fraud, deceit, chicanery, terrorism, blackmail, and betrayal where they can, by force of arms where they must. They want only one kind of peace — the peace that will follow when all men everywhere have submitted to their will and become their slaves.

All this does not mean that we should abandon our efforts to convince the world of the superiority of our way of life to anything the communists can deliver — deliver, not promise. Far from it. We must double and redouble our efforts to demonstrate the superiority of our "mouse trap." Let us not delude ourselves into thinking, however, that this will be sufficient in itself to assure our eventual triumph over communism.

We must never lose sight of the fact that the communists are not playing a game; they are fighting a war, and it is a war without rules and without quarter. No holds are barred; anything goes.

In addition to selling our "mouse trap," we must continue, if we do not wish to be overwhelmed, to attack communism and communists and to expose and combat their evil, their perfidy, their hypocrisy and cynicism, their real aims, their strategy, tactics, and methods, their lies, their brutalities, and their crimes. Communism must be destroyed, or it will destroy us.

Let us honor, not pillory, those who fight the battles for us. They are not hunting witches. They are fighting a war for survival — our survival.

---

90 MILES TO MOSCOW

By HAROLD RANSTAD
Chairman, Subversive Activities Committee
American Society for Industrial Security

"Tough Guy Takes Charge." Thus did the Internal Security Subcommittee of the United States Senate describe the "election" of Gus Hall as General Secretary of the Communist Party, USA, at the 17th National Convention of the Party in New York in December, 1959.

The Kremlin's selection of Hall to head up its Party branch in the United States at this particular time is only one of many signs of the times pointing to rough days ahead.

Gus Hall was born Arvo Kusta Halberg to parents who were charter members of the Party in the United States. He became a member himself when he was only 16 or 17 years old. In 1934, he took part in riots in Minneapolis during which he instructed a mob in the technique of resisting and withstanding tear gas, a useful skill picked up at the Lenin School of Political Warfare in Moscow, of which he is a graduate. Under the name of "Malone," he received instruction at the Lenin School in such subjects as military strategy and tactics, the erection of barricades, the use of "Molotov cocktails" and other explosives, sabotage, guerrilla warfare, and other arts and sciences essential to an understanding of Marx's theory of the "natural" decay and demise of capitalism.

Hall has held almost innumerable positions of leadership in the Party and was one of the eleven Party leaders convicted in New York in 1949 for conspiring to advocate the violent overthrow of the Government. Sentenced to five years in prison, he fled to Mexico and remained a fugitive from justice until October, 1951, when he was arrested and returned to the United States. Upon his release from Leavenworth Penitentiary on March 30, 1957, he resumed the position in Party leadership which culminated in his election as its General Secretary.

Communist Acquisitions

The Kremlin had already established an advance base in the Western Hemisphere at the time of Hall's elevation to the position of General Secretary. As a former Austrian Minister of the Interior has observed, the Red system of acquiring more and more territory is like slicing salami. "They slice off a little bit of the salami, but never enough to fight over. Finally, you are left with just the string of the salami, and that's not enough to fight over, either."

Lest we be left holding "just the string," it is time we seriously take stock of the new situation in the Western Hemisphere created by the Red beachhead in Cuba, which puts Moscow only ninety miles from our own coast.

In his keynote speech at the 17th convention, Gus Hall boasted that, "The revolutionary development in Cuba, and the courageous resistance of the Cuban people to American imperialist intervention, is an inspiration to the people's forces throughout this hemisphere."

Translated into English, this means that the success of Castro's communist revolution is an inspiration and a goad to every Communist and communist dupe in the Western Hemisphere to redouble his efforts to extend the Red Empire throughout this half of the world. The hopes and activities of a quarter of a million Communists in Latin American have been tremendously stimulated by Castro's success and his calls to battle against "American imperialism."

Cuba alone could present no great threat to the security or survival of the United States, but Cuba backed and instructed by the Red Empire constitutes a very "clear and present" danger to the entire hemisphere.

Intervention in Cuba

Soviet arms, technicians, and instructors have been pouring into Cuba in quantities far in excess of any possible Cuban domestic needs. Red Chinese immigrate openly into Latin America and Peiping supports Castro throughout the area. Demonstrations, riots, and even revolutions, so far abortive, keep South America and the Caribbean in a constant uproar. Moscow proclaims the Monroe Doctrine dead and threatens to support Castro with nuclear weapons, if necessary. Castro orders such a drastic cut in the

personnel of the American Embassy in Havana that the United States finds it necessary to sever relations with his government.

At the United Nations, Khrushchev bangs on the table, shouts, and waves his shoe to exemplify the dynamism, vigor, and fearlessness of his leadership, to demonstrate his contempt for the United States, and to convince the world, by the contrast between his behavior and theirs, that the leaders of the Free World are too "nice" and too polite to defend their decadent way of life.

Dissatisfied and unhappy people are the material out of which Marxism fashions revolutions, and nothing creates more dissatisfied and unhappy people than a national distribution of land which concentrates substantially all tillable acreage in a handful of enormous estates.

According to Lester D. Mallory, Deputy Assistant Secretary for Inter-American Affairs, two-tenths of one per cent of the farms in Guatemala comprise 40.8 per cent of the total privately owned acreage. In Argentina, 500 owners hold 18 per cent of the farm land; in Chile, one per cent controls 43 per cent of the land; and, in Paraguay, only 5.2 per cent of the farm units contain more than 125 acres, yet this 5.2 per cent accounts for 93.8 per cent of the total acreage. Latin America has nearly 200 million inhabitants, almost three-fourths of whom live off the soil and derive their livelihood from it.

Latin America Ripe

Such a situation is ideal for peddlers of revolution and "expropriation." Communists have little difficulty in convincing hungry and uneducated people that the solution is simple—that they have only to dispossess the rich, take from them their huge estates, divide those estates into many farms, and stock those farms with cattle acquired in the same manner.

There is in Latin America a large reservoir of respect and affection for the United States and its people, but there is also a dangerous undercurrent of envy and hate which the Marxists can be relied on to turn to account. Envy is the handmaiden of hate, and it is natural that the poor and the hungry will first envy, then hate, the rich and well-fed. Armed interventions by the United States in the past in some Latin American countries, the Panama Canal Zone, and the Mexican War still rankle in many Latin hearts and make them easy prey for those who portray the United States as a rich and grasping miser, ever increasing his golden hoard by merciless exploitation of his neighbors to the south. The support by the United States of established authorities in Latin America is easily turned to advantage by the Communists by identifying the United States with those who support and maintain economies characterized by extremes of wealth and poverty, by the black-and-white contrasts between the haves and the have-nots in Latin America.

The manner of the coming of communism to Cuba should instruct us for the future. Communism seldom comes as such to any nation; it comes as a "people's revolution," or as "democracy," or "agrarian reform," or under some other label more palatable than "communism."

That Castro's revolution is for export cannot be doubted, nor should the influence of his example on all Latin America be minimized.

Deterioration Accelerating

The situation in Latin America is deteriorating rapidly. Unless effective measures are taken immediately, the fuse that was lighted in Cuba may set off a chain of explosions with disastrous results for the entire hemisphere.

Whatever can be done to prevent a conflagration in Latin America must be done. Whether our efforts in that direction meet with success or not, appropriate steps must also be taken to assure continued operation of our industrial plant in the event of war or major disaster. In the entire hemisphere, only the United States possesses an industrial plant capable of supporting the defense necessary to survival in a nuclear age, and it must not be permitted to fail because of a lack of effective measures of civilian defense and industrial security.

Communism offers no tolerable solution to the economic problems of the poor and the exploited, and we must do what we can to convince our neighbors to the south of that simple fact.

People-to-People Program

A "people to people" program offers one means of communication by which this objective can be pursued. There are numerous channels through which the people of the United States can communicate with the people of Latin America.

Most obvious of these are the Latin colonies in our cities. Miami and Tampa, for example, have substantial populations of Latins, especially Cubans. The importance of their contributions to the political, economic and cultural life of their communities should be publicly acknowledged, and they should be encouraged to participate fully in the spiritual and material progress of their adopted municipalities. Imbued with American ideals and steeped in our way of life, they can become our most effective advocates among their own peoples in their native lands. The new President of the United States has made a good start in recognizing and moving to utilize the popularity and influence throughout Latin America of Governor Luis Munoz Marin of Puerto Rico.

Service clubs and civic organizations, such as Rotary International, Kiwanis, Lions, etc., can contribute importantly to such a project. Rotary International, particularly, could render invaluable service, inasmuch as it has clubs in many, if not all, Latin American

countries This would make possible the dissemination from its headquarters in the United States of prepared addresses accurately and truthfully describing the situation confronting the hemisphere and counteracting vicious and deceitful Marxist propaganda.

A little ingenuity and effort can uncover many channels of communication useful in countering communist propaganda with truth and understanding.

Responsibility of U. S. Government

The responsibility of our State Department and of firms and individuals doing business or visiting in Latin America cannot be overstated. It is essential that our Government speedily adopt and implement an effective program to thwart the designs of the Marxist imperialists on the Western Hemisphere.

Domestically, we must have sound measures for the protection of our industrial plant, including the personnel, power, transportation, communications, and raw materials necessary to its continued functioning.

It is essential that Congress lose no time in taking a close, hard look at the problems of civilian defense and industrial security and in passing sound and effective legislation to implement its findings. It should consider whether the present organizational pattern, scope, and authority of the Office of Civil and Defense Mobilization are adequate to insure successful discharge of its responsibilities in the light of the new hemispheric situation. It should ask whether too much responsibility and authority have been fragmentized and diffused among state and local authorities, and whether there has been a resultant inequality of readiness and progress among the fifty states and countless localities. The responsibility is that of the Federal Government, which must rely on the nation's industrial plant to support its armed forces.

Traditionally, the Pentagon has been responsible for industrial security as such. A plant cannot operate, however, without personnel, supplies, power, transportation, and communications. A careful delineation of the respective responsibilities of the Pentagon and the OCDM would appear to be necessary to insure complete coverage without duplication of effort and without jurisdictional collisions and disputes.

The Commission on Government Security, in its report submitted June 21, 1957, recommended that Congress thoroughly review the subject of the great complex of defense-related facilities requiring physical security.

The Supreme Court, in William L. Greene v. Neil H. McElroy, Secretary of Defense, on June 29, 1959, struck down the nation's industrial security program for the protection of confidential defense information from the prying eyes of the Kremlin on the ground that it had not been authorized by Congress or the President. Congress should consider whether legislation is not desirable to supplement, reinforce, or replace Executive Order 10865, as amended January 18, 1961, and Department of Defense Directive 5220.6. The industrial plant on which the nation must stake its existence must be protected at all costs against destruction by an enemy which regards it as its Number One target.

In an article, "On the Character of Modern War," in *Red Star*, November, 18, 1960, Lieutenant Colonel S. Krasilnikov emphasized the importance which will attach to the deep rear of the enemy in any new war:

> In the last world war, the strategic efforts of the opposing sides were basically concentrated on crushing the enemy's armed forces, and the deep rear was affected only to a certain extent. This was so because the blows dealt to the deep rear did not have a decisive strategic effect on the course and the outcome of the war. *In a new war, the opposite will be true, and the desire to hamper normal work in the rear of the enemy will be of first-class importance.* . . . In a nuclear-rocket war, *from the very first day*, the deep rear will become a battlefield of fierce combat with all the terrible consequences resulting therefrom. (Emphasis supplied)

Congressional Activity

Two committees—the House Committee on Un-American Activities and the Senate Internal Security Subcommittee—have led the way in keeping Congress and the public informed about the country's major internal security problems and in urging effective legislation to cope with them. Both committees, for example, have held hearings which have emphasized the danger—and the actuality—of Communist infiltration and potential sabotage in vital defense industries, such as steel, weapons manufacturing, radio-telegraph communications, and shipping. Both committees, too, have recommended legislation to plug the serious loophole in our industrial security created by the Supreme Court's decision in the Greene v. McElroy case.

A concerted Communist campaign is now under way, however, to destroy these two committees. Within the last year, the Communist Party has set up two new front organizations, one of them for youth, which have the sole purpose of working for the abolition of the House and Senate Communist-investigating Committees. The Communists have boasted that, as a result of their campaign, 750,000 copies of a speech by a Member of Congress urging the abolition of the House Committee on Un-American Activities have been distributed throughout the country, along with thousands of petitions to the same effect. The day before the 87th Congress convened, there appeared in the *Washington Post*, the capital's only morning newspaper, a two-page ad urging members of the House to vote for abolition of the Committee. Three hundred twenty-seven persons signed this ad, the largest groups being educators (over 100) and clergymen (about 70). On the same day, over 200 youthful picketers urged

abolition of the Committee in demonstrations near the White House.

There are some hopeful signs, despite these demonstrations, of growing power in the Communist abolition drive. Anti-Communist demonstrators were also on hand and, for the first time in years, actually outnumbered the pro-Communist pickets. The Member of Congress whose speech had been so widely distributed announced, a few days before Congress convened, that, although he still wanted the House Committee abolished, he was temporarily calling off his promised move to bring about its dissolution because it would be politically dangerous for many members of the House to vote for such a step at the present time.

Despite these setbacks, the Communist abolition campaign will be continued and probably intensified. The threat to the Committee is by no means ended. Unfortunately, it is safe to predict that the unending torrent of Communist propaganda and pressure to eliminate the committees will be met by a mere trickle of communications from good Americans who have at heart the true welfare of their country. This places the Members of Congress in a very uncomfortable situation. They are eager to hear from the other side; they would welcome an overwhelming flood of communications urging them to take those actions which they know to be correct. They desperately need the support of their constituents against the blandishments and pressures of organized and vocal minorities.

Congress has shown time and again that it can act with speed and dispatch under the spur of extreme emergencies. It would welcome an undeniable mandate from the people to provide without delay adequate civilian defense and industrial security measures.

A great and good friend of the United States, General Carlos P. Romulo, has sounded a warning in *Reader's Digest*, November, 1960, which can be disregarded only at the cost of our national existence:

"America, wake up! Shake off the course of inaction that is giving the forces of evil the right-of-way in this world! Face up to the blunt fact that you are now engaged in a real war and that it must be fought and won. This is the only alternative to defeat by default."

INDEX

INDIVIDUALS

ORGANIZATIONS

PUBLICATIONS

○

a §025 anti-saute
b §026 conduct of exp
cd §027 hearings pt 1-2
e §028 hearings
f §029 religion